

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA**

AT MUSOMA

PC. CIVIL APPEAL NO. 36 OF 2020

(Arising from the judgment of the District Court of Tarime at Tarime (Hon. B.C. Kubyo-RM), dated 29th November, 2019 in Civil Appeal No. 23 of 2019)

CHARLES OKONG'O APPLICANT

VERSUS

ANGISA OBONYO RESPONDENT

JUDGMENT

Date of hearing: 3rd November, 2020

Date of ruling: 4th November, 2020

KISANYA, J.:

This is an appeal against the decision of the District Court of Tarime in Civil Appeal No. 23 of 2019 where the appellant's appeal against the decision the Nyaburongo Primary in respect of Civil Case No. 2 of 2019 was dismissed for being time barred.

The appeal before this Court is based on three grounds to the effect that, the District Court erred in law and fact in holding that the appeal before it was time barred. However, this Court discovered that, parties were not asked to address the District Court on the issue of time limitation which disposed of the appeal. It was raised and determined by the learned resident magistrate without hearing the parties.

When this matter was called on for hearing, both parties fended themselves. Therefore, in addition to the grounds of appeal, I asked them to address the Court on the right to be heard in relation to time limitation.

The appellant prayed to adopt the petition of appeal. He argued that, the appeal filed before the District Court was not time barred on the reason that, it was received thereto on 02/08/2019. The appellant went on to argue that, he was not accorded the right to be heard as far as the issue of time limitation is concerned. He therefore, moved me to allow the appeal and quash the decision of the District Court. On his part, the respondent contended that both parties were heard on whether the appeal was filed in time. He further contended that, the District Court did not error in its decision. Thus, he urged the Court to dismiss the appeal with costs.

Having examined the rival contentions and as pointed earlier on, the issue for consideration is whether, the appellant's appeal against the decision of Nyaribungo Primary Court was time barred. This calls us to look at the provision that specifies a time for appeals of this nature. The relevant provision is section 25 (1) (b) of the Magistrates Courts Act, Cap. 11, RE.E 2002. For ease of reference, this provision is reproduced hereunder:

"Every appeal to a district court shall be by way of petition and shall be filed in the district court within thirty days after the date of the decision or order against which the appeal is brought."

In the light of the above, an appeal against the decision of the primary court as in the matter at hand is required to be filed within thirty days after the date of impugned decision. The judgment subject to appeal before the District Court was delivered on 4th July 2019. Therefore, the time to appeal against the said decision lapsed on 3rd August, 2019. Glancing through the records, the appellant's petition was filed in the District Court of Tarime at Tarime on 2nd August, 2019. The court's stamp and signature of authorized officer were affixed thereon to confirm that the petition of appeal was received on 2nd August, 2019.

With that findings, it is apparent clear that, the learned resident magistrate of the District Court erred in holding that, the petition of appeal was filed on 5th August, 2019.

Also, the District Court was also of the considered view that, the appeal was incompetent on the reason that, it was initiated by a document titled "Petition". Having considered the provision of section 20(3) of the MCA, I am of the humble view that, an appeal is not incompetent merely because it is made by way of petition instead of petition of appeal. This is because the law requires the appeal to be way of petition. Further, in view of the principle of overriding objective, what matter is whether the appellant stated the grounds to challenge the decision of the primary court. This was done in the case at hand.

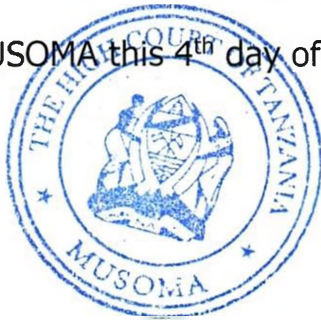
As earlier on stated, the records reveal that, the issue of time limitation and competence of the appeal was raised suo motu by the District Court. It went on to decide the appeal basing on the said issues without hearing the parties. This contravened Article 13(6) (a) of the Constitution of the United Republic of Tanzania. Any decision reached without hearing the parties is a nullity. See **EX D. 8656 CPL Senga s/o Idd Nyembo and 7 Others vs R**, Criminal Appeal No. 16 of 2018 (unreported). In that case, the Court of Appeal cited with approval its decision in **Abbas Sherally and Another vs Abdul Sultan Haji Mohamed Fazalboy**, Civil Application No. 33 of 2002 (unreported) that: -

"The right of a party to be heard before an adverse action or decision is taken against such a party has 13 been stated and emphasized by the courts in numerous decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified, even if the same decision would have been reached had the party been heard, because the violation is considered to be a beach of the principles of natural justice"

Guided by the above decision, the decision of the District Court of Tarime cannot be allowed to stand because it breached the principle of natural justice. This caused miscarriage of justice.

Ultimately, I hereby nullify the proceedings and quash and set aside the ruling and order of the District Court of Tarime in Appeal No. 23 of 2019. The case file is remitted to the District Court for rehearing before another resident magistrate with competent jurisdiction. Considering the circumstances of this case, I make no order as to costs. Order accordingly.


Dated at MUSOMA this 4th day of November, 2020.




E. S. Kisanya
JUDGE

Court: Judgment delivered this 4th November, 2020 in the presence of the appellant and the respondent. B/C Mariam present.




E. S. Kisanya
JUDGE
4/11/2020