

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT SUMBAWANGA

PROBATE APPEAL NO. 1 OF 2019

(Originating from Mlele District Court in Revision No. 1 of 2018)

DOMINICK LEONARD MBARUKU APPELLANT

VERSUS

FESTO CLEMENT KAMSINI 1ST RESPONDENT
LYDIA CLEMENT KAMSINI 2ND RESPONDENT

Date of last Order: 11/12/2020

Date of Judgment: 14/12/2020

RULING

C.P. MKEHA, J

On 11/12/2020 the first respondent argued a preliminary point of objection to the effect that the present appeal was filed outside thirty (30) days' time pursuant to an order of this court by his Lordship D.E. Mrango - J dated 07/05/2019. The first respondent submitted that, the appellant lodged the appeal before the High Court on 17/06/2019 whereas their same was supposed to be lodged on 06/06/2019. Mr. Chambi learned advocate who appeared for the appellant commenced his reply by conceding that indeed, the appeal ought to have been lodged not later than 6/06/2019.

The learned advocate submitted that the Petition of Appeal was presented for filing before the High Court Registry on 27/05/2019. However when the same was placed before the Honorable Deputy Registrar the latter directed that the Petition of Appeal ought to be accompanied with a copy of decree or

drawn order. The learned advocate had to face the Deputy Registrar in view of drawing his attention that under section 25 of the MCA, the Deputy Registrar's directives lacked legal backing. According to the learned advocate, it was until 17/06/2019 when the Deputy Registrar forwarded the documents to the relevant authority for admission which was already out of time.


The learned advocate admitted that indeed, the Petition of Appeal was not endorsed to have been received on 27/05/2019 but on 17/06/2019. As per this court's order, the appeal was expected to be lodged not later than 06/06/2019. An endorsement on the appellant's Petition of Appeal indicates that, the same was received before this court on 17/06/2019. That was clearly out of time. As per the laws, an appeal filed out of time without seeking leave of the court to do so is liable to be dismissed.

However, upon perusing the relevant Movement File consisting of internal correspondences on admission of appeals I really found the learned advocate's story correct. That, he really presented his Petition of Appeal at the High Court's Registry on 27/05/2019 only to be told that the documents were deficient. There was however no evidence to the effect that the documents were then returned to the Appellant. The learned advocate for the appellant had never done anything to dispute the fact that the Petition of Appeal is endorsed to have been received in court on 17/06/2019 until when the preliminary point of objection was scheduled to come up for hearing.

The internal correspondences on admission of the appeal or otherwise were not timely served to the 1st respondent before he appeared for hearing. The present appeal traces its origin from Inyonga Primary Court. That being the case, the Petition of Appeal ought to have been presented at Mlele District Court. **See: Abdallah S. Mkumba vrs Mohamed Lilame (2001) TLR 326 at 329.**

For the foregoing reasons, the appeal is struck out. I make no order as to costs. Dated at **SUMBAWANGA** this 14th day of DECEMBER, 2020.




C.P. MKEHA
JUDGE
14/12/2020

Court: Ruling is delivered in the presence of Ms. Neema holding brief of Mr. Chambi Advocate for the Appellant and the 1st Respondent in person.




C.P. MKEHA
JUDGE
14/12/2020