

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF  
TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

**PC.CIVIL APPEAL NO. 07 OF 2019**

*(Arising from matrimonial Appeal No. 02 of 2018 from Shinyanga District Court.  
Originating from P/C Civil case No 59 of 2018 of Kizumbi Primary Court.)*

**PASTORY RAPHAEL.....APPELLANT**

**VERSUS**

**MAGANGA MAGULYA.....RESPONDENT**

**JUDGEMENT**

*Date of last order: 25.02.2020*

*Date of Judgement: 13.03.2020*

**E.Y.MKWIZU, J.:**

This is an appeal from the ruling of the District Court in (PC) Civil Appeal No. 2 of 2018 dated 1<sup>st</sup> June, 2018. A brief background of the facts leading to this appeal may be useful. The applicant, Pastory Raphael, by chamber summons supported by an affidavit made under section 22(1) of the MCA, Cap 11 R:E 2002 and section 14(1) of the Law of limitation Act, Cap 89 R:E 2002 had prayed for extension of time within which to file an appeal out of time on the ground that he was late to lodge his appeal within time because he was not supplied with the copy of the judgment timely.

Citing section 20 (3) and (4) of the MCA Cap 11 R E 2002 and rule 3 of the Civil procedure ( Appeals in proceedings originating from the Primary

courts) Rules, GN 312 of 1964, the District Court struck out the application on the ground that the applicant's reason that he failed to file his appeal within time for not being supplied with the copy of the judgement is within time is not founded in law. Appellant was dissatisfied with the decision of the District Court. He appealed to this Court on the following grounds: -

"1. That, the learned magistrate erred in law and facts when he failed to extend time for filing an appeal basing on the act that the copies of the judgement are not necessary for filing an appeal from primary Court to the District Court

2. That, the learned magistrate erred in law and facts when he failed to extend time for filing an appeal without regarding the fact that one of the reasons for appealing was illegality in the judgement of Kizumbi Primary Court.

3. That, the learned magistrate erred in law and facts when he failed to evaluate properly the submission of the applicant during the hearing of Msc. Civil Application No.2/2018"

Both the appellant and the respondent appeared in person. Appellant gave his short submission, He adopted his grounds of appeal

and few words in addition that he should be granted extension of time to file his appeal so that he can challenge the decision of the primary Court.

The respondent on the other hand argued that the appeal has no merit. He said, the matter had already been determined in accordance with law. He generally supported the decision of the District Court and prayed to have the appeal dismissed.

There is no doubt that the appellant, **Pastory Raphael** was late for about 11 months in filling his appeal from the Primary court to the District court. The judgement by the Primary Court was delivered on 20<sup>th</sup> March, 2017 and it was certified on 31<sup>st</sup> August 2017. The application for extension of time before the District Court was filed on 9<sup>th</sup> January, 2018.

The question before me, as was the question in the District court is whether the appellant prayer for the extension of time was justified.

I propose to start with grounds one and three together. This is because they all fall under one category which involves evaluation and appreciation of the District courts proceedings. In his first ground of appeal, the appellant faults the District court in its failure to extend time for filling

an appeal basing on its reasoning that the copies of the judgement are not necessary for filling an appeal from Primary Court . In other words, the appellant is discomfort with the reasoning by the learned Magistrate.in his third ground of appeal appellant is blaming the District Court's magistrate for failure to evaluate properly the applicant's submission in Msc. Civil Application No.2/2018.

I think these grounds should not detain me here. The learned magistrate was very specific and analytical on this. At pag 4 and 5 of its ruling, after making reference to the law with regards to the appeal procedure from Primary court to the District court ,said,I quote

*"The applicant main reasons of his application is that the primary court failed to supply him with the judgement so that he could file his appeal within the prescribed time. However, according to Rule 4 of GN 312 of 1964 the decision of the primary court is not a condition precedent for filling of an appeal.... In short according to rule 4 (10 of GN 312 of 1964 filling of an appeal to the district court does not require, as a condition, attachment of a copy of the judgement of the primary court. Therefore, the reasons given by the applicant that he was not supplied with a copy of judgement, is not sufficient to warrant the extension of time to file the appeal."*

That is the law. I have no reason to fault the learned Magistrate on this point. The two grounds lack merit.

Coming to the second ground, the appellant is faulting the learned magistrate for not considering the appellant's ground of illegality in the judgement of Primary Court in dismissing his application. I am aware that illegality of a decision is sufficient ground to abridge time as stated in the case of **Principal Secretary, Ministry of Defence and National Service v Devram Valambhia** [1992] TLR 182 where it was stated that:

*"In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record right".*

I think, the appellant affidavit in support of the application which was presented before the District court will shed light on this issue. The affidavit reads:-

*"1. That, I am the applicant in this application thus conversant with all the facts I am about to depose below.*

*2. That, on 20<sup>th</sup> March 2017 the trial Primary Court deliver its judgment, where I was ordered to pay the Respondent the sum of Tshs. 5,000,000/= or my house with **Plot No. 1275 Block 'HH'** located at Ndala area be sold to pay the Respondent.*

*3. That, being dissatisfied with the decision of the trial court, I orally informed the trial court my intention to Appeal to District Court against the whole decision of the trial court.*

*4. That, on several times I requested to be supplied with trial court proceedings and decision for appeal purposes, but to date I have neither supplied with the court proceedings nor decision, consequently I found myself the time which appeal filed has been lapsed hence this application.*

*5. That, failure to have copies of the court proceedings and decision within a given time is the main reasons for delay to file appeal within a given time.*

*6. That, I have substantial grounds of appeal to be determined by this court if this application is granted.*

*7. That, I make this deposition in support of the reliefs sought for in the chamber summons."*

I have dispassionately considered and weighed the rival arguments from both parties. I have also perused the court's proceedings as well as the appellant's affidavit quoted above. I am of the strong view that this ground is an afterthought. As it can be gathered from the seven paragraphs of the said affidavit as quoted above, none of them speaks of illegality of the trial Primary Court's decision. The submission by the parties at the hearing of application No 2 of 2018 before the District Court is also silent on this issue. The appellant's sole ground for enlargement of time was that he was late in being supplied with the judgement of the trial primary court. Even in his submission before me, appellant did not point out the alleged illegality for the court to evaluate and decide on it.

In Civil Application No. 2 of **2010 - Lyamuya Construction Company Ltd Vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**. Court of appeal made the following observations:-

*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in VALAMBIA'S case, the court meant to draw a general rule that every*

*applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. The Court there emphasized that such point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process."*

Applying the foregoing statement of principle to the case at hand, I am not convinced that the appellant disclosed to the District court existence if any, illegality to warrant the District court to grant the sought extension of time

For the reasons explained above, I find the appeal lacking in merit. It is hereby dismissed.

**DATED at Shinyanga this 13<sup>th</sup> day of March 2020.**

