

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 657 OF 2018

(Arising from Probate PC Appeal No. 94 of 2017)

SHABANI R. KAVITENDA.....APPLICANT

VERSUS

YASIN S. KAVITENDA.....RESPONDENT

RULING

Date of Last Order:19/11/2019

Date of Ruling: 31/03/2020

S.M. KULITA, J.

This is an application by way of chamber summons filed by the applicant under Section 5(1) (c), (2) (c) of the Appellate Jurisdiction Act, Cap 141 and Rule 45 (a) and (b), Rule 46(1) of the Tanzania Court of Appeal Rules, 2009 seeking for this Court to grant a certificate on point of law in respect of an intended appeal to the Court of Appeal of Tanzania against the decision of this Court in PC Civil Appeal No. 94 of 2017.

The reason for the application as stated in paragraphs 3, 4, 5 and 6 of the Applicant's Affidavit was that this Court dismissed his appeal on the ground that it was lodged out of time without considering the prerequisite period of obtaining copies of judgment and decree of which they could not have lodged appeal without first obtaining a copy of judgment. One day lapsed was for awaiting copy of judgment which are to be excluded in computing time of limitation.

Mr. Samuel Shadrack Ntabaliba (Advocate) appeared for the applicant and the Respondent appeared in person (unrepresented). The parties agreed the matter to be disposed of by way of written submissions.

The learned counsel for the applicant submitted that the PC Appeal No. 94 of 2017 was dismissed on 12th October, 2018 by this court on the ground that it was lodged out of time. The judgment which the Applicant appealed against was delivered on 31st July, 2017 and the certified true copies of judgment was stamped on 18th August, 2017 implying that it was ready for supplying to the parties. The Applicant was supplied with the said judgment on 24th August, 2017. On 31st August, 2017 the Applicant lodged PC Civil Appeal No. 94 of 2017. Now counting from when the judgment was certified as a true copy on 18th August, 2017 was ready to be supplied to the parties is less than thirty (30) days up to the date of 31st August, 2017 when the appeal was lodged. The law has made it clear that in appealing the time start to run after obtaining copies of judgment and in this case at hand the time started to run against the applicant on 18th August, 2017 or 24th August, 2017, hence the appeal being lodged on 31st August, 2017 was lodged within time.

The applicant's counsel went on submitting that **Section 19 (2) of the law of Limitation Act [Cap 89 RE 2002]** gives clearly the position of computing the period of appeal excluding the date of receiving a copy of judgment. The Applicant's Counsel also cited the case of **REGISTERED TRUSTEES OF THE MARIAN FAITH HEALING CENTER V. THE REGISTERED TRUSTEES OF THE CATHOLIC CHURCH SUMBAWANGA DIOCESE, Civil Appeal No. 64 of 2006 (unreported)** where the Court of Appeal held that;

"In view of what we have endeavored to show above, and in the light of section 19(2) (supra) it follows that the period between 2/5/2003 and 5/12/2003 when the Appellants eventually obtained a copy of the decree ought to have been excluded was excluded, it would again follow that when the appeal was lodged on 19/12/2003 was in fact and in law not time barred."

The learned Counsel for the applicant went on submitting that they have lodged this application seeking for a certificate on point of law as the matter originated from the Manzese/Sinza Primary Court and there is a point of law which need to be revisited and entertained by the Court of Appeal which is on the interpretation of the Law of Limitation Act, section 19(2).

In response to the written submission by the Applicant' counsel, the Respondent submitted that the counsel for the Applicant failed to notice that appeals from a matter arising from primary Court is quite different

from the matter arising from District Court of which the Computation of time is counted differently.

The respondent further submitted that the point of law has been exhaustively dealt with by this Court and it arrived to proper and fair judgment by referring to various Court of Appeal decisions over the similar issue. So he prays this application to be dismissed with costs.

In his rejoinder, counsel for the applicant submitted that failure to recognize days of obtaining copies of judgment is one of the point of law which needs intervention of the Court of Appeal.

Having gone through the submission of the parties to this application, I find that in order for the certificate on point of law to be granted, the Applicant is required to show that there is a reasonable chance of his appeal to succeed to the Court of Appeal. There is no dispute that the matter at hand originated from Manzese/Sinza Primary Court. The Applicant's appeal to the High Court was dismissed on the ground that the appeal was lodged out of time.

Section 25 (1) (b) of the Magistrates' Courts Act, Cap. 11

R.E 2002 states that:

"in any other proceedings any party if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal therefrom to the High Court; and the High

Court may extend the time for filing an appeal either before or after such period of thirty days has expired”.

Section 25(3) and (4) of the Magistrates’ Courts Act provides that:

“Every appeal to the High Court shall be by way of petition and shall be filed in the district court from the decision or order in respect of which the appeal is brought”.

“Upon receipt of a petition under this section the district court shall forthwith dispatch the petition together with the record of the proceedings in the primary court and the district court, to the High Court”.

From the above provisions, it is clear that appeal to the High Court from the decision or order of the district court exercising appellate or revision jurisdiction on a matter is originating from the primary court, the law applicable is the Magistrates’ Courts Act [Cap. 11 RE 2002]. What the party who is intending to appeal to the High Court is required to do is just to file a petition to the district court which passed the decision or order and it is the duty

of the district court to dispatch the proceedings of the primary court and those of the district court to the High Court. It is a wastage of time for the applicant to wait to be supplied with the copies of the decision and order for the purposes of appealing to the High Court where the matter originates from the primary court. This is not the requirement here as the matter is not governed by the Civil Procedure Code [Cap. 33 R.E 2002] which under Order XXXIX Rule 1(1) requires the copies of judgment and decree to be attached to the memorandum of appeal. **Section 19(2) of the Law of Limitation Act [Cap 89 RE 2002]** is not applicable in computing the time to appeal in matters originating from the decisions of the Primary Courts.

As there is no reasonable chance of success established by the Applicant, I hereby dismiss this application with costs.



S.M. KULITA

JUDGE

31/03/2020