

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

**PC. CIVIL APPEAL NO. 40 OF 2019**

*(Arising from Civil Application No.11 of 2019, Bariadi District Court, original Somanda Primary Court Civil case No.18/2019).*

**CHIEF JOHN KASILI ILEME.....APPELLANT**

**VERSUS**

**MADULU BUKOBOGO.....RESPONDENT**

**JUDGMENT**

30/3 & 22/05/2020

**G.J.Mdemu, J.;**

The Appellant Chief John Kasili Ileme preferred this appeal to challenge the decision of the District Court of Bariadi in civil application No.11 of 2019 that denied him to appeal out of time. This was on 6/8/2019. He intended to challenge the decision of Primary Court of Somanda, in civil case No.18 of 2019 which declared the Respondent chief of Dutwa.

According to the record, on 2/2/2019 a clan meeting was convened in the residence of Maduhu Mayenga Munhu and nominated the Respondent Madulu Bukobongo (Ng'wanasigga) clan chief. This followed removal of the Appellant from the office of the chief due to violation of clan rules, misbehavior and want of corporation. The Appellant thus filed a civil suit in the Primary Court objecting installing the Respondent into the office of chief. As stated above, the trial Primary Court of Somanda on 13/3/2019 gave the Appellant sixty (60) days to convene another clan meeting so that the

Appellant be heard. On 28/4/2019 the meeting was conducted as ordered and got reported to court. The trial Primary Court reconsidered that evidence and found that, as the meeting dated 2/2/2019 had many members in attendance compared to that of 28/4/2019, then the Respondent was declared a chief, thus ceremony to install him was ordered to proceed as intimated. This was on 27/5/2019.

The Appellant did not appeal in time to the lapse of the statutory period till the 24/7/2019 when he knocked at the doors of Bariadi District Court in an application for enlargement of time. The court did not accommodate him for want of sufficient cause for the delay. As stated, the instant appeal on the following two grounds got filed to this court because the Appellant is still interested to pursue the lost chieftom:

- 1. That the District Court erred in law and facts by holding that the Appellant had stated no reasons in his affidavit for extension of time while the reasons for such delay are therein contained in the said affidavit.*
- 2. That the District Court also erred in law and facts by failure to understand properly the order of the Primary Court which appeared to be a barrier for the Appellant to appeal within time.*

At the hearing of this appeal on the 30<sup>th</sup> of March 2020, appeared in person before me the Appellant and the Respondent. In support of the appeal,

along with the contents of his grounds of appeal which he prayed for its adoption forming part of his submission, the Appellant stated in addition thereto that, after the decision of the Primary Court, he took time to discuss with the clan thus exhausting the sixty (60) days, otherwise he was in time. He also observed that, there are two judgment of the court on the same matter; the last one resulting from the filed minutes following the second clan meeting. He thus urged me to allow the appeal.

In reply, the Respondent resisted this appeal as he could not observe anything meritorious. He also prayed the reply to the petition of appeal be adopted forming part of his submission. He thereafter added that, the Appellant had ample time to process the appeal and by not doing that, appears to have contented with the outcome of the trial court's decision. To him, the Appellant accepted to surrender the chieftom but decided to pursue following advice received from others. He could not see any merit to the appeal and asked me to dismiss it.

From what parties submitted and upon going through the proceedings of the two courts below, one question to ask is whether the Appellant in his application for enlargement of time to the District court indicated sufficient cause as to require this court to quash that decision. In resolving this, the two grounds of appeal will be argued together.

In the two grounds of appeal, the main complaint is on failure of the court to accommodate his reasons for delay to appeal. In determining this, the

District Court of Bariadi at page 2 of the ruling made the following observation:

*I went through the affidavit filed before this court where I noted that, there was no where stated the reasons as to why he could not appeal on time rather he was stating execution made by the trial court. The applicant was supposed to tell the court reasons as to why he did not lodge the appeal in time.*

This was the basis of the decision of the court. As the learned senior Resident Magistrate did, I also visited the affidavit of the Appellant in that application and noted the following facts pleaded in paragraphs 4, 5,6,7 and 9 of the Appellant's affidavit: **One**, the clan meeting met on 28/4/2019 nullified nomination of both the Appellant and the Respondent in that chiefdom without considering the clan meeting met on 2/2/2019. This latter meeting is what the court found that the Appellant was not heard. Was the Appellant heard in the clan meeting on 28/4/2019? If so, why is he complaining?

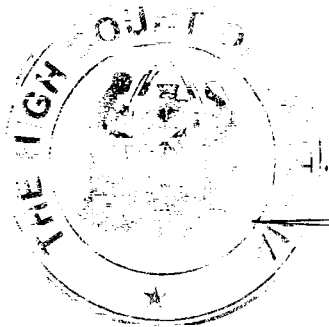
**Two**, is the time to appeal counted from the decision of the court made on 23/3/2019 or 27/5/2019? **Three**, was there any decree for execution and from which decisions between the two? **Four**, there is one registered case number for the main suit and execution proceedings that came subsequently in another decision of the same court. **Five**, the order of the court declaring the Respondent to be a chief is incorrect, inappropriate and illegal.

In my humble view, had the learned Senior Resident Magistrate heeded to the points alluded above which are pleaded in the affidavit, would have noted that the Appellant has raised illegality in the decision subject to appeal. And after that understanding, again would have realized that illegality also constitutes sufficient cause for the enlargement of time to appeal. This was stated in, among many other decisions, the case of **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia (1992) TLR 185** that:

*When the point at issue is one alleging illegality of the decision being challenged, the court has a duty, even if 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.*

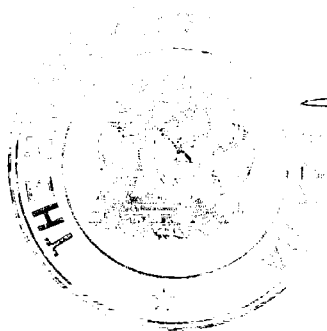
As the Appellant has pleaded illegality in the decision blessing the Respondent's chieftom, and that since those illegalities can only be determined if the court is clothed with those mandate, unless and until this appeal is allowed is when the District court will have opportunity to put the record right challenged in the intended appeal.

In that stance this appeal is hereby allowed. The decision of the District Court of Bariadi denying enlargement of time to appeal is accordingly quashed and set aside. Parties to this appeal each to bear own costs. It is ordered accordingly.



**Gerson J. Mdemu**  
**JUDGE**  
**22/05/2020**

**DATED at SHINYANGA this 22<sup>nd</sup> day of May 2020.**



**Gerson J. Mdemu**  
**JUDGE**  
**22/05/2020**