

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
PC CIVIL APPEAL No. 54 OF 2020

MAJILA FADHILI..... APPELLANT

VERSUS

VEDASTO KAHUNGU..... RESPONDENT

(Appeal from the decision of the District Court of Kilombero at Ifakara)

(Saning'o- Esq, RM.)

dated 15th January, 2020

in

Civil Appeal No. 35 of 2019

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RULING

24th March & 13th April 2021

Rwizile, J

Before this court is the second appeal. The appellant was aggrieved by the decision of the District Court of Kilombero. He advanced five grounds of appeal in protest which I do not intend to reproduced herein. However, this appeal has been antagonised by a point of preliminary objection raised by the respondent that; it is time barred. The objection was argued by written submissions. Parties were unrepresented.

In support of the objection the respondent argued that, this appeal is out of time since it was filed on 17th of February, 2020.

The impugned decision, it was argued, was delivered on 15th of January, 2020. He said, the law expressly states time limitation for a party to appeal against the decision of the district court, exercising its appellate jurisdiction to be 30 days. He referred to section 25 of the Magistrates' Court Act, [Cap 11 R.E 2019], herein to be referred as the Act

It was his submission further that, attaching a copy of the judgement and proceeding is not a legal requirement. He asserted; the appellant cannot allege that he was out of time for the reason that he was waiting for the said copies. He said, the case of **Sophia Mdee vs Andrew Mdee & 3 others**, Civil Appeal No. 5 of 2015, the court cited Rule 2 and 4(1)(2) of The Civil (Appeals in Proceedings Originating in Primary Courts) Rules 1983 GN No. 312 of 1964, to show his case. He also cited cases of **Isack Kahwa vs Bandora Salum** (Pc) Civil Appeal No. 6 of 2020 and **Daudi Siulanga vs Istiqama Secondary School**, Pc. Civil Appeal No. 05 of 2018, where the court stated that, there is no cure for the appeal which was filled out of time than dismissing it. It was therefore his prayer that the objection be upheld, and the appeal be dismissed.

Disputing the objection, the appellant submitted that he was late to file his appeal because he waited for copies of judgement and proceedings. He said, he could not prepare his grounds of appeal without having the said documents. He added, the court cannot trace the denials and admissions which happened during the trial without having the copy of proceedings. According to him, it was not true when the respondent argued that the attachment of those copies is not a legal requirement.

He submitted further that, he was supplied with copies on the last Friday, then he prepared the grounds of appeal on Saturday, since the following

day was Sunday. He could not file it on that day, he then filed it on Monday. The allegation that he filed an appeal out of time does not match his situation since he was not the cause of this delay. He then prayed for the preliminary objection to be dismissed with costs.

Having considered the submissions and records of the lower courts. The issue to be determined is whether this appeal is time barred. To begin with, it is in record and undisputed that, the decision which the appellant is appealing against was delivered on 15.1.2020 and this appeal was filed on 17.2.2020.

Under the provision of section 25(1)(b) of the Act, the law provides for time limit to appeal against the decision of the district court when exercising its appellate powers, to be thirty days. For ease reference the same states;

25.-(1) Save as hereinafter provided-

(a)

(b) 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 there from 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.

Coming to this appeal, as per the records, it is crystal clear that, it was filed on the 31st day. Since, thirty days from 15.01.2020 lapsed on 14.02.2020.

So, for this appeal to be filled in time, the appellant ought to have filed it on 14.02.2020. The appeal, as said was filed on 17.2.2020. I am therefore in agreement with the respondent that this appeal is out of time. The appellant, having discovered that his appeal was out of time, he had to apply for leave to appeal out of time. The objection is sustained. This appeal is struck out with costs.

AK. Rwizile
JUDGE
13.04.2021

Delivered in the presence in the presence of the appellant and respondent appearing in person this 13th day of April 2021.

AK. Rwizile
JUDGE
13.04.2021



Recoverable Signature

X

A handwritten signature in blue ink, appearing to be 'AK. Rwizile', written over a horizontal line.

Signed by: A.K.RWIZILE

