

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY AT KIGOMA)

AT KIGOMA

(APPELLATE JURISDICTION)

PC. CRIMINAL APPEAL NO 1 OF 2021

(Arising from Misc. Criminal Application no. 6/2020 of the Kasulu District Court, before I.E. SHULI - RM, Original Criminal Case No. 21/2020 of the Manyovu Primary Court, before Hon. F.M. Mtega - RM)

NIMPAYE D/O LEONARD APPELLANT

VERSUS

JUSTINA D/O KIRONGA RESPONDENT

J U D G M E N T

11th May & 18th May, 2021

I.C. MUGETA, J.

The applicant prayed for extension of time to appeal out of time because she was untimely supplied with copy of the judgment for helping her advocate to prepare the grounds of appeal. The District Court dismissed the application because the copy of judgment was not necessary to commence an appeal in the District Court. Aggrieved, the appellant has appealed to this court with two grounds of appeal. These are: -

- i. That, on account of the cogent facts as they were deposed in the Appellant's affidavit supporting her application for an*

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extension of time of appealing against the decision of the Primary Court of Manyovu in the said Criminal Case No. 21 of 2020, the Honourable Resident Magistrate erred in law and fact when she dismissed the Applicant's application.

- ii. That, since the Appellant's delay to lodge her appeal against the decision of the trial Primary Court of Manyovu in the said Criminal Case No. 21/2020 was caused by her failure to obtain a copy of the impugned judgment for the Appellant's advocate's perusal in order to discern good grounds of appeal, the Honorable Resident Magistrate ought to have exercised her discretion judicially by granting an order extending the time of appeal to the Appellant.*

Mr. Kabuguzi, advocate for the applicant argued the two grounds jointly. He submitted that the Magistrate erred for failure to appreciate that despite the fact that attaching a copy of the judgment to the petitions of appeal to the District Court is not a preliquisite, the issue in this case is that the same was required for the advocate to prepare the grounds of appeal.

I agree with Mr. Kabuguzi that if the applicant engaged an advocate, copy of the judgment was necessary for him to prepare the ground of appeal. However, this is subject to making a request for the supply of the copy thereof timely.

In paragraph 6 of the affidavit it is averred that the applicant applied for the copy of the judgment after meeting advocate Kabuguzi on 23/7/2020, two days after the delivering of the judgment. However, the letter requesting for the supply of that copy neither appears on the affidavit as an attachment nor in the trial court's file. This creates doubts on whether such a request was made timely.

The respondent submitted before this court that judgment was supplied on the same day and that up to 9/9/2020, the appellant appeared before the trial court without expressing her intention to appeal. It is my finding that the averment that the judgment was supplied on the same date is not reflected in the counter affidavit. However, I agree with her that when the applicant appeared before the trial court after the judgment was delivered she used to inform that she had not satisfied the compensation order not because she intended to appeal but due to matters involving family issue particularly her child's sickness. This was after the thirty days within which to appeal had expired. The records of the trial court shows that it was on 9/9/2020 when she informed the trial court that she intended to file an appeal out of time. Indeed, by 9/9/2021, the appeal period had expired. Therefore, the need to appeal came to her as an afterthought.

In view of the foregoing, I hold that since the applicant has failed to prove that she applied for a copy of judgment within time she cannot claim that the delay to appeal was due to late supply of the copy of the judgment. I, further hold, for the stated reason, that the applicant has not disclosed sufficient cause for the delay. I find, though for a different reason, no sufficient ground to disturb the decision of the District Court. Appeal dismissed with costs.



Mugeta
I.C. Mugeta
Judge
18/5/2021

Court: Judgment delivered in chambers in the presence of both parties.

Sgd: I.C. Mugeta

Judge

18/5/2021