

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

MISCELENEOUS CIVIL APPLICATION NO.13 OF 2021

**(Arising from Matrimonial Revision 01 of 2015 of the District Court of
Songea at Songea)**

AMIRI ALLY HANYA..... APPLICANT

Versus

BAHATI MUSTAFA RESPONDENT

RULING

Date of Last Order: 18/05/2021.

Date of Ruling: 01/06/2021.

BEFORE: S.C. MOSHI, J.

The preliminary objection was taken by respondent's advocate against the applicant's application for extension of time to appeal out of time under section 25(1) (b) of the Magistrate Courts' Act Cap. 11 R.E 2019, it involves one point as hereunder: -

That, the application is incompetent because the application is not supported by the intended grounds of appeal.

During hearing of the preliminary objection, the applicant was represented by Mr. Dickson Ndunguru, advocate whereas the respondent was represented by Zuberi Maulidi, advocate.

Mr. Zuberi submitted *inter alia* that the application contravenes Rule 3 of the Civil Procedure (Appeals on proceedings originating in Primary Courts) Rules, GN 312 of 1964 which governs appeals originating

from primary courts. He said that, the rule requires the applicant who is filing an application to appeal out of time must state out the reasons why the petition of appeal was not filed within thirty days after the decision. Also, it is mandatory for the said application to be accompanied by the petition of appeal or grounds of objection to the decision or order which the applicant intend to appeal against. He said that in the application at hand, the applicant requests for extension of time to appeal against the decision originating from primary court. Therefore, the applicant was duty bound to accompany it with the petition containing grounds of appeal.

It was Mr. Zuberi's further submission that the grounds may be raised in the application, that is in the affidavit. However, applicant's affidavit at paragraphs 1 up to 8 has nothing qualifying to be ground of appeal. The applicant has only prayed for extension of time on ground of illegalities. He prayed that the application be struck out with leave to refile it in accordance with the law if the applicant wishes.

In reply Mr. Ndunguru agreed that an application for extension of time to appeal out of time against the decision of the Primary court to High court must show grounds of the intended appeal; one option it may be accompanied with a petition containing grounds of appeal alternatively the applicant may show the factual and legal points which he intends to refer to High court in the affidavit.

He said that, they chose the second option, the applicant's affidavit in paragraph 4, does categorically complain that the District court when excising its revisionary power on 3rd June 2020 acted contrary to section 22(3) of the Magistrates Courts Act, Cap 11 R.E 2019 which requires the District Court when revising the primary court's decision by altering parties' rights must call the affected party; however it didn't call the applicant. He pointed out that this is the first ground and that they didn't cite the law because it is an affidavit.

He argued that, likewise paragraph five shows that the applicant was denied his right to be heard, the act is illegal and contrary to article 13 of the Constitution of United Republic of Tanzania 1977 as amended from time to time. He argued that this is reflected at paragraph 5 where the magistrate stated that primary court's decision had errors and it partly reversed the decision however it gave the house to the respondent. He argued that if the decision was irregular because there were conflicting decisions then it should have been quashed as indicated in paragraph 6 of the applicant's affidavit.

Supporting his submission, he cited the case of **Asha Said vs. Given Manyanga and Morgan Manyanga**, Miscellaneous Civil Application No. 28 of 2013, High Court of Tanzania at Dar es salaam, where the court rejected the application as the grounds of appeal were

not stated. He however argued that the case at hand is distinguishable because grounds of appeal have been shown.

He finally argued that, issue of irregularities may be grounds for extension of time as well as grounds for appeal and the court is not permitted to embrace irregularities.

In rejoinder Mr. Zuberi reiterated his submission in chief and added that the affidavit does not explain that they are specifically grounds of appeal rather it is a narration on what transpired in the District court and same applies to illegalities, it is not stated as a ground of appeal.

The main issue for determination is whether the objection is meritorious.

As argued by both counsels the procedure of making application for leave to appeal out of time against the decision originating from primary courts is provided for under Rule 3 of the Civil Procedure (Appeals in Proceedings originating in Primary Courts) Rule 1984, GN 312/1964, (the rules) which states: -

"an application for leave to appeal out of time to a district court from a decision or order of a primary court on the High Court from a decision of a district court in the exercise of its appellate or revisional jurisdiction shall in writing, shall set out the reasons why a petition of appeal was not or can not

be filed within thirty days after the date of the decision an order against which to is desired to appeal and shall an accompanes by the petition of appeal or shall set out the grounds of objection to the decision or order."

Therefore, it is a legal requirement which is two fold, the application for leave to appeal out of time must be accompanied by a petition of appeal or it should contain the grounds of objection to the decision or order. In the application at hand there is no petition of appeal as admitted by the applicant's counsel. However, looking at the affidavit it is my view that it contains grounds of objection as envisaged under Rule 3 of the rules, for easy reference I quote paragraphs 4, 5,6 and 8 they reads thus: -

4. that, I was not issued with summons by the District court when it set for revision until 3^d June 2020 when I was shown by Bahati Mustafa a copy of order that states the house and leave it vacant.

5. that, the decision had been tainted with a lot of illegalities as I was not afforded with the time of being heard and no summons was issued to me.

6. the court proceed to award the house to the respondent instead of quashing the decision of the trial court which it stated it as conflicting decisions.

8. that, for the interest of justice this application be granted otherwise the applicant will be condemned unheard.

To be specific, it is clear in the fifth paragraph of the affidavit that, the applicant complains of not being heard. Likewise, the sixth paragraph points out presence of irregularities in the trial court's judgement.

Evidently, the law is not explicit as far as the format for setting out the grounds of appeal in the application for a party who opts to follow the second option i.e to set out the grounds of objection to the decision or order. However, it is my view that the gist of the law is to require the applicant to set out and illustrate the grounds of the intended appeal. It is my view that the applicant has been able to show the points of the intended appeal as herein above shown.

That said and done, I reject the preliminary objection and order that the application proceed with hearing on merits.

It is so ordered.

Right of Appeal Explained




S.C. MOSHI

JUDGE

1/06/2021