

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

HC. CRIMINAL APPEAL NO. 24 OF 2021

(Arising from judgment of the District Court of Ilemela at Ilemela in Original Criminal Case No.
81 of 2020)

**DIRECTOR OF PUBLIC PROSECUTIONS APPELLANT
VERSUS**

**MKIKI S/O WARABI 1ST RESPONDENT
ATHUMAN S/O ABASI 2ND RESPONDENT
JUDUKA S/O WALIASAMPU & GODFREY 3RD RESPONDENT
JUMANNE S/O MOHAMED 4TH RESPONDENT
GASPER S/O ALOYCE 5TH RESPONDENT**

RULING

29th April & 5th May, 2021

RUMANYIKA, J.:

When the appeal was, by way of audio teleconferencing called on 28/04/2021 for hearing, I had to hear the parties on a "time bar" and competency based preliminary points of objection (the p.o) formally raised on 27/04/2021, and now taken by Mr. Joseph Kinango learned counsel for Mkika Warobi and 4 others (the respondents). Ms. L. Meli learned state attorney appeared for the Director of Public Prosecutions (the appellant).

Having had abandoned the 2nd limb of the p.o, Mr. Kinango learned counsel submitted that the impugned judgment was delivered on

6/10/2020 but the appeal was filed on 2/3/2021 say five (5) months far beyond 45 days' limit without extension of time being sought and granted. We pray that the time barred appeal be dismissed. Counsel submitted. That is all.

Ms. L. Meli learned state attorney submitted that in fact pursuant to provisions of Section 379(1) (b) of the Criminal Procedure Act Cap 20 RE 2019, therefore counting from 27/01/2021 when actually they were supplied with certified copies of the impugned proceedings then they lodged a memorandum of appeal say 35 days on 03/03/2021, the appeal was within time lodged therefore the misconceived p.o was reliable to be dismissed. That is all.

In his rejoinder, Mr. Kinango learned counsel submitted that even where it was evident that the appellant was late in the day supplied with copies of the proceedings which is not true, no letter of request for the copies was copied to the respondents. Short of which provisions of the Law of Limitation would have been rendered nugatory. The learned counsel submitted.

The issue is whether with regard to the memorandum of appeal the appeal was time-barred much as the provisions of Section 379 of the Act set a limit of forty-five (45) days only. The answer is in the affirmative. Having had requested it the appellant may have been supplied with copies of the impugned proceedings but late in the day yes, but as was rightly in my considered opinion quietly argued by Mr. Kinango learned counsel, once it was formally and sufficiently established, the point should have constituted a ground for extension of time in which case also, the appellant may have presented a copy of letter copied to the respondent and proof that it was received by the trial court, when exactly they were informed that the certified copies were ready for collection or proof that appellant had not received it before and so forth other than from the bar mere allegations of the learned state attorney.

Whether or not the copies were say 5 months later or even at a later stage certified that one was immaterial in my considered opinion.

I think if provisions of Section 379 (1) (b) of the Act were that segregate and democratic God forbid the Law of Limitation Act Cap 89 R.E. 2019 would have been meant for the rest of the world except the DPP and that one happening, the latter would have appealed only when, where and

perhaps against whatever he felt like appealing against. I would therefore increasingly hold that extension of time was only granted not at the whims of the parties but at the discretion of the court unlike what would have appeared here. No party can in himself apply and grant an extension of time.

The time barred appeal is dismissed. It so ordered.

Right of appeal explained.


S. M. RUMANYIKA

JUDGE

03/05/2021

The ruling delivered under my hand and seal of the court in chambers this 05/05/2021 in the absence of the parties.




S. M. RUMANYIKA

JUDGE

05/05/2021