

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

AT SONGEA

DC. CIVIL APPEAL NO. 1 OF 2021

(Originating from Misc. Probate and Administration Application No. 02 of 2020 which arises from Probate and Administration Cause No. 18 /2015 of Songea Urban Primary Court)

FATUMA ALLY HAKIMU 1ST APPELLANT
HALIMA ALLY HAKIMU 2ND APPELLANT
KAISI ALLY HAKIMU 3RD APPELLANT
ANIFA ALLY HAKIMU 4TH APPELLANT

VERSUS

AHMAD SELEMAN (Legal Representative of
KULASI HAKIMU ALLY, Deceased) **RESPONDENT**

Date of last hearing: 20/04/2021

Date of Ruling: 17/06/2021

RULING

I. ARUFANI, J

When the matter at hand came for hearing on 20th April, 2021, the respondent was represented by Mr. Zuberi Maulid, learned advocate and the appellants were represented by Mr. Alex Nyoni, learned Advocate. The counsel for the respondent told the court that, the appeal before the court is originating from the decision given by Songea Urban Primary Court

(hereinafter referred as the primary court) in Probate and Administration Cause No. 18 of 2015.

He told the court that, as the appeal is originating from primary court the law governing it is the Magistrates Court Act, Cap 11 R.E 2019. He argued that, if that is the law governing the appeal then under section 20 (3) of the mentioned law the appeal was supposed to be filed in the court within thirty days from the date of the decision appealed from. He told the court that, although the decision the appellants are challenging before this court was delivered on 20th November, 2020 but the appeal at hand was filed in the court on 14th January, 2021 which is beyond thirty days provided by the law.

He went on telling the court that, as the appeal is originating from primary court the appeal was supposed to be filed in the district court which made the decision which is being challenged before this court and not to file the same in this court as it was done by the appellants. In fine he prayed the court to base on the above stated points of law to dismiss the appeal for being filed in the court out of time and for being filed in a wrong court.

The counsel for the appellants opposed the said points of law and told the court that, the appeal is not originating from primary court and said the appeal is originating from Miscellaneous Probate and Administration Application No. 02 of 2020 of the District Court of Songea (hereinafter referred as the district court). He stated that, the appellants were seeking for extension of time to apply for revision of the decision given by the primary court in Probate and Administration Cause No. 18 of 2018.

He argued that, as the appeal is originating from the decision of the district court and not the decision of the matter originating from primary court the law governing it is Civil Procedure Code, Cap 33 R.E 2019 and the Law of Limitation Act, Cap 89 R.E 2019 and not the Magistrates' Courts Act. He went on arguing that, the cited laws requires the appeal originating from district Courts to be filed in the High Court within sixty days and not thirty days stated by the counsel for the respondent. He submitted that, as the decision of the district court was delivered on 20th November, 2020 and the appeal was filed in the court on 24th January, 2021 it was filed in the court well within the time and it was filed in a right court. At the end he

prayed the points of law raised by the counsel for the respondent to be overruled for want of merit.

In his rejoinder the counsel for the respondent told the court that, the Civil Procedure Code and the Law of Limitation Act cited by the counsel for the appellants are governing matters which the district court is exercising its original jurisdiction. He stated that, the original jurisdiction of the matter was exercised by the primary court and the matter filed before the district court was seeking for extension of time to move the district court to exercise its revisional jurisdiction and not to exercising its original jurisdiction.

He referred the court to section 25 (1) (b) of the Magistrates' Courts Act and said it shows the time to appeal against decision of a district court exercising its revisional jurisdiction is thirty days and not sixty days stated by the counsel for the appellants. He based on the above stated reason to reiterate his submission in chief that, the appeal of the appellants was filed in the court out of time and was filed in the wrong court.

Having carefully considered the submissions from both sides and after going through the record of the lower courts the court has found

proper to state at this juncture that, the appeal before the court is originating from Miscellaneous Probate and Administration Case No. 02 of 2020 of the district court whereby the appellants in the appeal at hand were seeking for leave to file in the district court an application for revision of the order of the primary court given in the Probate and Administration Cause No. 18 of 2018 dated 7th June, 2018 out of time. The application was dismissed and the appellants decided to file the instant appeal in this court to challenge the decision of the district court.

That being the position of the matter the court has found that, although it is true that the matter at hand has relation with the Probate and Administration Cause No. 18 of 2015 of the primary court but the appeal before the court is not challenging the decision originated from the primary court. It is challenging the decision of the district court made in Miscellaneous Probate and Administration Case No. 02 of 2020 which originated from the district court. The court has found that, section 20 (3) of the Magistrates' Courts Act is governing appeals and revisions from primary courts to district courts and not appeals from the district courts to the High Court. For clarity purposes the said provision of the law states as follows:-

"Every appeal to a district court shall be by way of petition and shall be filed in the district court within thirty days from the date of the decision or order against which the appeal is brought."

To the view of this court the wording of the above quoted provision of the law is very clear that is governing appeals from primary court to district court and not appeal from the district court to the High Court. The counsel for the respondent invited the court to look into section 25 (1) (b) of the Magistrates' Courts Act which he said it states the limitation of time to appeal from a decision or order of a district court to the High Court is thirty days and not sixty days stated by the counsel for the appellants.

The court has found the cited provision of the law is not applicable in the appeal at hand because the appeal before the court is not challenging the decision or order made by the district court in the exercise of its appellate or revisional jurisdiction. It is challenging the decision made by the district court in an application for leave to apply for revision of the decision of the primary court out of time. The referred provision of the law states as follows:-

*"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."*[Emphasis added].

The bolded wording of the above quoted provision of the law shows clearly that, the provision is governing limitation of time to appeal from a decision or order of a district court made when a district court is exercising its appellate or revisional jurisdiction and not when is exercising its original jurisdiction. The court has found that, as the appeal at hand is not challenging the decision made by the district court in the exercise of its appellate or revisional jurisdiction but in the exercise of its original jurisdiction it cannot be said the above quoted provision of the law is governing limitation of time upon which the appeal at hand would have been file in the court.

The question arise here is that, if the provisions of the law cited by the counsel for the respondent are not governing the time for the appellants to appeal to the court against the impugned decision of the district court which law is governing it. The court has found the counsel for the appellants told it the law which is supposed to govern limitation of time

for the appellants to appeal in the appeal at hand is the Civil Procedure Code and the Law of Limitation Act and not the Magistrates' Courts Act stated by the counsel for the respondent.

The court has found further that, although the counsel for the appellants stated the limitation of time for the appellants to appeal in the matter at hand is the law mentioned hereinabove and stated the appeal was supposed to be filed in the court within sixty days but he didn't state which provision of the said laws is providing for the said period of sixty days. The court has found the record of the district court shows the application which the appellants are challenging its decision before the court was filed in that court under section 14 (1) of the Law of Limitation Act.

The court has also found that, the decision given by the district court in the stated application is a ruling and the appellants are challenging the drawn order extracted from the said ruling. That being the position of the matter the court has found the provision of the law which is governing limitation of time to appeal against the said order is item 2 of Part II of the schedule to the Law of Limitation Act which states the time to appeal for

matter which no period of limitation is prescribed by the Law of Limitation Act or any other written law is forty five days.

Therefore the time for the appellants to appeal from the ruling and the order of the district court made in the application filed in the district court by the appellants was forty five days and not sixty days stated by the counsel for the appellants or thirty days stated by the counsel for the respondent. That being the time within which the appellants were required to file their appeal in the court the court has found that, from 20th November, 2020 when the ruling of the district court was delivered to 14th January, 2021 when the appeal at hand was filed in the court about fifty five days had passed which is beyond the limitation period of forty five days provided under the law cited hereinabove.

That make the court to find the appeal of the appellants was filed in the court out of time prescribed under item 2 of Part II of the schedule to the Law of Limitation Act and not under sections 20 (3) or 25 (1) (b) of the Magistrates' Courts Act cited to the court by the counsel for the respondent. In the premises the court has found it has no jurisdiction to entertain the appeal of the appellants as it was filed in the court out of

time and without leave of the court. Consequently, the appeal is hereby struck out for being filed in the court out of time and each party to bear his own costs. It is so ordered.

Dated at Songea this 17th day of June, 2021



I. Arufani

I. ARUFANI

JUDGE

17/06/2021

Court:

Ruling delivered today in the presence of the second appellant and in the presence of Mr. Alex Nyoni, learned counsel for all appellants and in the absence of the respondent and his learned counsel who is well aware that the matter is coming for ruling today as the date of ruling was set in his presence. Right of appeal to the Court of Appeal is fully explained to the parties.



I. Arufani

I. ARUFANI

JUDGE

17/06/2021