

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

PC CIVIL APPEAL No 05 OF 2021

(Arising from the decision of the District Court of Nyamagana in Misc. Civil Application No. 19 of 2019, Originating from PC Civil Case No . 179 of 2018 of the Primary Court of Mkuyuni of Nyamagana District)

AMANI MAFURU.....APPELLANT

VERSUS

SHIBIDE LUGOBA.....RESPONDENT

JUDGMENT

27th May & 23rd June, 2021

TIGANGA, J.

This is an appeal against the decision of the District Court of Nyamagana in Miscellaneous Civil Application No. 19 of 2019 in which the appellant had sought for an extension of time within which he could appeal against the decision of the Mkuyuni Primary Court, in PC Civil Case No. 179 of 2018. In the impugned decision, the appellant was not granted the extension of time as he failed to show sufficient cause following his failure to account for each day of delay.

Dissatisfied, the appellant lodged an appeal before this court with one ground namely;



1. That since there were contentions of illegalities of proceedings, the appellate court erred on point of law to deny the appellant and the court itself an opportunity to deal with and probe into the alleged illegalities.

Along with the ground of appeal, the appellant prayed for orders to quash the order of the District Court and set them aside, and to order and grant an extension of time to appeal against the decision of the trial court as well as the costs of the appeal.

The appeal was opposed by the respondent, who along with filing the reply to the petition of appeal, he raised a point of preliminary objection to the effect that;

1. The appeal is out of context and a total abuse of court process.

Parties were unrepresented by Advocates; therefore they fended for themselves in person. At the hearing of the appeal which was conducted orally, it was unanimously agreed by the parties and the court directed that, the preliminary objection be argued along with the appeal.

The appellant took off first by stating that he was denied his right to hearing before both, the trial and first appellate courts. He also

complained that instead of being heard, he was forced to pay the money without being given an opportunity to defend the allegation. According to him, that is the reason he decided to appeal as he was denied the chance to sign and participate in the proceedings.

In her reply, the respondent argued against the appeal that, the case started in the Primary Court as a criminal case and later as a civil case. She said, after the decision of the Primary Court, the appellant did not immediately appeal, he appealed two months after the decision of the Primary Court was delivered therefore the District Court was justified to deny him the leave to appeal out of time because he gave no reasons for his delay.

Regarding the raised preliminary objection, she submitted that the appeal at hand is out of context as the same was lodged before the impugned decision was delivered. She submitted further that, the act of the appellant of complaining against the decision that was yet to be made is an abuse of court process.

The appellant made no rejoinder, the fact that marked the end of the parties' submissions, both for and against the preliminary objection and the appeal.

As already stated above, that as a matter of practice, the preliminary objection being raised on point of law must be dealt with first before diving into the merits of the appeal. Therefore, in that spirit, I will consider the objection first before going to the merit of the appeal. Now, in such endeavour, the gist of the preliminary objection is that, this appeal is out of context and an abuse of court process on the ground that, the same was lodged before the decision of the District Court which is complained against in this appeal, was delivered by the appellate District Court. In her opinion the respondent she submitted that, the appeal is an abuse of court process.

As indicated in the record, the appellant submitted nothing regarding the raised and argued preliminary objection. He did not do so even after he has been informed of that right by the court off record, in rejoinder. For that reason, I will therefore in this respect, consider the arguments advanced by the respondent only.

Briefly, the essence of her argument was that this appeal was lodged before the decision appealed against was delivered.

The truth of falsity of the allegation raised by the respondent can be easily ascertained from the record, just by looking at the record of the District Court, on when the decision appealed against was delivered

by the District court, and when the petition of appeal was filed in the High Court? The record shows that, the hearing of the case before the District Court was concluded on 28/08/2019, and the resultant ruling was delivered on 30/09/2019, before Hon. Sumaye, SRM who delivered the same in the absence of the parties.

However, the same record shows that, the appeal was presented for filing on 25/09/2019, which is signified by the official receiving stamp of the court, and the signature of the registry officer who received and dated it as such. This means, looking at the timing of filing the appeal and delivery of the ruling of the District Court, it goes without saying that the appeal was filed five days before the decision which is appealed against was delivered.

I must confess that this is a rather strange practice, as in all years at the bench I have never come across any appeal of this kind. Just like the respondent, I am completely in accord with the respondent's argument that the appellant's appeal against a decision that had not been made is indeed an abuse of court process.

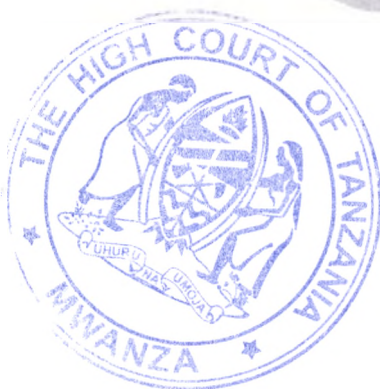
The normal and known procedure of appeal from the District Court to this court in cases of this nature as provided under section 25 of the Magistrates Courts Act, [Cap 11 R.E 2019] is that, appeals are always

made against the decisions of the court. This means the appellant has to wait for case to be decided and the decision to be delivered for him to know that he has lost the case before deciding to appeal. From there the dissatisfied party then can lodge an appeal to challenge that decision. There is no way one can claim to have been dissatisfied with the decision yet to be made. From what has been stated, it can be concluded that the appellant's appeal is unfounded and premature, because there was no any decision against which he could appeal at the time when he lodged an appeal. It was procedurally incorrect to lodge this appeal before the decision he was appealing against was made.

Having so held, the preliminary objection is found to be meritorious and upheld, this incompetent and prematurely filed appeal is struck out with costs.

It is so ordered

DATED at **MWANZA** this 23rd day of June, 2021




J.C. TIGANGA

JUDGE

23/06/2021