

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

PC. CIVIL APPEAL NO. 24 OF 2020

(Arising from Civil Appeal No. 7 of 2019 of the District Court of Masasi.

Original Civil Case No. 24 of 2019 of Chiungutwa Primary Court)

MASUDI ARABI SAAMBILI.....APPELLANT

VERSUS

NANJOTA AMCOS.....RESPONDENT

RULING

8 April, & 24th June, 2021

DYANSOBERA, J.:

The appellant Masudi Arabi Saambili is seeking to impugn the decision of the District Court of Masasi on the following grounds:-

1. That the learned appellate Magistrate Hon. R. Yunus-RM, grossly erred in law and fact by hearing and determining the case without having jurisdiction as there was the change of magistrate from Hon. B.K. Kashusha to the successor Hon. R.Yunus-RM without stating any reasons to that effect, and hence the successor magistrate lacks jurisdiction.

2. That, the learned appellate Magistrate Hon. R.Yunus-RM, grossly erred in law and fact by striking out the appeal filed by the appellant without considering the strong reasons from the appellant on his failure to file his written submission and hence it dismissed the appeal without sufficient reasons.

Briefly, the facts leading to the instant appeal, according to the records availed to this court by the district court are the following. Before the Primary Court of Masasi District at Chiungutwa, the respondent through Fredrick Humphrey Lyanga successfully instituted Civil Case No. 7 of 2019 against the appellant for recovery of Tshs.13,110,000/= (say thirteen million, one hundred and ten thousand shillings) being the property of farmers allegedly misused by the appellant in his capacity as a Board member. His first appeal to the District Court vide Civil Appeal No. 24 of 2019 was struck out for want of prosecution. This is a second appeal.

In the course of composing the judgment, I have been made to understand that the appellant is appealing against Civil Appeal No. 7 of 2019 of the District Court of Masasi which owes its origin from Civil Case No. 24 of 2019 from Chiungutwa Primary Court. This is clear from the wording of the appellant in his petition of appeal dated 12th June, 2020 where it is indicated that this PC Civil Appeal No. 24 of 2020

"Originated from Civil Appeal No. 7 of 2019 from the District Court of Masasi which emanated from Civil Case No. 24 of 2019 from Chiungutwa Primary Court".

The procedure on appeals from the district courts in their appellate and revisional jurisdiction are governed by section 25 of the Magistrates' Courts Act [Cap.11 R.E.2019] which provides as hereunder:-

25.-

(1) Save as hereinafter provided—

(a) in proceedings of a criminal nature, any person convicted of an offence or, in any case where a district court confirms the acquittal of any person by a primary court or substitutes an acquittal for a conviction, the complainant or the Director of Public Prosecutions; or

(b) 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 therefrom to the High Court; and the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired.

(2) The Minister may make regulations prescribing the procedure for appeals from district courts by a complainant other than the Director of Public Prosecutions against the decision or order of a district court confirming the acquittal of any person by the primary court or where a district court substitutes an acquittal for a conviction.

(3) Every appeal to the High Court shall be by way of petition and shall be filed in the district court from the decision or order in respect of which the appeal is brought:

Provided that the Director of Public Prosecutions may file an appeal in the High Court and, where he so files an appeal, he shall give notice thereof to the district court and the district court shall forthwith dispatch the record of proceedings in the primary court and the district court to the High Court.

(4) Upon receipt of a petition under this section the district court shall forthwith dispatch the petition, together with the record of the proceedings in the primary court and the district court, to the High Court.

The available records dispatched by Masasi District Court to this court show Civil Appeal No. 24 of 2019 from the District Court whose decision was given on 26th day of May, 2020 originating from Chiungutwa Civil Case No. 7 of 2019 bearing the decision given on 28th June, 2019. These records are different from the proceedings the appellant is appealing against which are Civil Appeal No. 7 of 2019 from District Court of Masasi and Civil Case No. 24 of 2019 from Chiungutwa Primary Court.

With this state of affairs, this appeal is against a non-existent decision. For that reason, it is incompetent and incapable of being entertained by this court on account that the petition received by the district court and the dispatched to this court is different from the record of the proceedings in the primary court and the district court dispatched to this court.

Since the appeal is incompetent and hence unmaintainable by this court, the same should be struck out as I hereby do.

The appellant is advised to file a proper petition of appeal citing the proper proceedings against which he is seeking to challenge by way of appeal.

Each party to bear his own costs.




W.P. Dyansobera

Judge

24.6.2021

This ruling is delivered under my hand and the seal of this Court this 24th day of June, 2021 in the presence of the parties.

Rights of appeal to the Court of Appeal explained.



A handwritten signature in blue ink, appearing to read 'W.P. Dyansobera'.

W.P. Dyansobera

Judge