

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

(APPELLATE JURISDICTION)

PC. CIVIL APPEAL NO. 11 OF 2021

(Arising from Misc. Civil Application No. 4/2019 of the District Court of Kigoma,
before E.B. Mushi – RM, Originating from Civil Case No. 48 of 2017 before V.L.
Kagina – RM, Nguruka Primary Court)

ELIKANA S/O BWENDA..... APPELLANT

VERSUS

SYLIVESTER S/O KUBOKO.....RESPONDENT

J U D G M E N T

10th & 10th August, 2021

A. MATUMA, J.

The applicant and his several others applied for extension of time to appeal to the District Court against the judgment of the Primary Court.

The District Court dismissed the application for having found that the same was brought without sufficient cause.

The appellant became aggrieved hence this appeal. At the hearing of this appeal, the appellant was represented by advocate Daniel Rumenyela while the respondent was present in person and represented by advocate Ignatius Kagashe.



After some discussions by the parties, it transpired that the learned Resident Magistrate in reaching to her decision did not address the issue of illegalities which was among the grounds raised for the sought extension of time.

It also transpired that the learned Resident Magistrate raised issues of law upon which she condemned the appellant unheard particularly when she held at page 6 of the ruling that she had nothing to act on because regulation 3 of G.N. 312 of 1964 was not complied with for the application before her was not accompanied with the petition of Appeal or grounds of objection to the impugned decision. This was like raising a Preliminary Objection at the ruling stage and determining it against a party without hearing him. In the case of **Ex-B.8356 S/Sgt. Sylvester Nyanda v. The Inspector General of Police and Attorney General**, Civil Appeal No. 64/2014, the Court of Appeal of Tanzania held that it is elementary and fundamental principal of determination of disputes between the parties the courts of law to limit themselves to issues raised by the parties in the pleadings as to act otherwise might well result in denying any of the parties the right to a fair hearing. The Court of Appeal further observed that even when the court is of the view that certain issue not raised is necessary to be determined for determination of the real matter

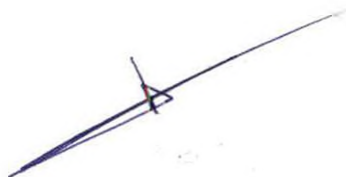
in controversy then the parties must be summoned and afforded opportunity to address the court on the issue.

I had also held as such in a number of cases of this court including that of **Anthony Josephat Kabula versus Hamis Maganga**, DC Civil Appeal No. 1 of 2019 High Court at Kigoma.

In the instant case, the learned magistrate did not invite the parties to address her on whether in the application before her there was legal obligation to attach the petition of appeal. She thus condemned the appellant unheard. As that is one of the complaints in the petition of Appeal before me (ground 3), I find it to have merit and accordingly allow it.

Under the herein observations Mr. Kagashe was of the view that the remedy is to quash the ruling of the District Court and remit the case file for the learned magistrate to determine the skipped issues.

Mr. Rumenyela learned advocate for the appellant on his party maintained that I should exercise my powers to remedy the situation by granting the extension to the appellant because the parties have been rotating in the District Court for years.



I think, I should agree with Mr. Rumenyela learned advocate. The parties have been scrambling in the District Court for almost four years with a very trivial issue (just an application for extension of time vide Misc. Civil Application No. 1 of 2018). In that respect and in the exercise of my general powers under section 95 of the Civil Procedure Code, Cap. 33 R.E. 2019, I do hereby determine the dispute by scrutinizing the records of the lower court.

Under my scrutiny, the appellant had sufficient cause for the delay because up to the expiry of the period of appeal they were not supplied with the impugned decision as authenticated by their letter which was received by the trial primary court on 09/11/2017 in which the primary court magistrate endorsed "*Wapewe*". In that respect up to the time of the expiry of the appeal time they were yet to be supplied with such necessary document for appeal purposes. Not only that but also there is allegation of illegality that the impugned judgment falls short of the legal requirements. With all these it is better and in the interest of justice for the appellant to be extended time to appeal so that the real question in controversy between the parties is determined in the District Court.

I therefore allow this appeal and extend the appellant fourteen (14) day's starting to count from today within which he must file his appeal to the

District Court. No orders as to costs since to a large extent the problems arose in the court itself.

It is so ordered.




A. Matuma

Judge

10/08/2021

Court: Judgment delivered in the presence of advocate Daniel Rumenyela for the appellant, the respondent in person and his advocate Mr. Ignatius Kagashe. Right of Appeal against this Judgment explained.

Sgd: A. Matuma

Judge

10/08/2021