

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

**PC CRIMINAL APPEAL NO. 07 OF 2021**

*(Arising from the decision of the District Court of Nyamagana at Mwanza in Criminal Appeal No. 10 of 2020 from original Primary Court Urban Criminal Case No. 2290/2018)*

**MATHIAS ABASI ..... APPELLANT**

**VERSUS**

**ANNE JOHN ..... RESPONDENT**

**JUDGMENT**

*03/08/2021 & 27/8/2021*

**W. R. MASHAURI, J;**

This is a second appeal originating from the decision of the District court of Nyamagana in Misc. Civil Case Appeal No. 10 of 2020 which had emanated from the decision of the Mwanza urban Primary court in Criminal Case No. 2290 of 2018.

Being dissatisfied with the decision of Nyamagana District court in Misc. Civil Case Appeal No. 10 of 2020, the appellant has now come to this court with two grounds of appeal to the effect that: -

1. The Hon. learned magistrate erred in law and fact in holding that, failure of the trial magistrate to explain to the appellant his right to

appeal in the impugned judgment is a minor error which does not constitute to illegality.

2. The learned magistrate erred in law and fact for failure to extend time for the appellant to appeal to the District court out of time, hence, infringed the appellant's statutory right of appeal to be heard.

The appellant is represented by Mr. Ezekiel James advocate and the respondent by Mr. Boniface Saliro learned counsel. The appeal was argued by filing written submissions upon the learned counsel for both parties obtained leave of this court to do so.

In his submission in support of the appeal, the learned counsel for the appellant submitted that, formerly the applicant was charged and tried for the offence of obtaining money by false pretences c/s 302 of the Penal Code. His case was tried by the urban primary court for Mwanza at Mwanza whereby he was found guilty of the offence of obtaining money by false pretences and was sentenced to suffer six months' imprisonment. He was also ordered to pay the respondent's money Shs. 1,200,000/= after executing his jail sentence of six months. The trial court however did not explain the appellant of his right to appeal to the District court against the decision of the trial court. He did not therefore appeal in time.

When he became aware of his right to appeal he lodged in the District court of Nyamagana an application for leave to appeal out of time against the decision of the Mwanza Urban primary court the application of which was opened as Misc. Civil application No. 10 of 2020. His application however was dismissed with costs to follow the event. His application was dismissed on the reason that the applicant had failed to give good and sufficient cause to be granted leave to appeal to the District court out of time.

On his part, the learned counsel for the respondent submitted in reply that the failure by the trial court to explain the appellant of his right to appeal is not fatal but is a minor error. That, in his application for leave to appeal out of time, he told the magistrate that, he did not appeal in time because he was sick. That when he got sick, he attended treatments in different hospitals but he did not say whether or not he was admitted and that he failed to account for each day of delay.

Having so submitted, the learned counsel for the respondent, prayed this court to dismiss the application for want of sufficient cause.

The issue is whether the appellant had in his application for leave to appeal out of time failed to give sufficient cause.


It is settled that; sickness is permissible ground when the appellant was sick.

It is also stated by the Court of Appeal in the case of **John David Kashekya v/s. The Attorney General** Civil Application No. 107 f 2012 (unreported) that: -

"Sickness is a condition which is experienced by the person who is sick. It is not a shared experience except for children which are yet in a position to express their feelings. It is the sick person who can express his/her condition whether he/she has strength to move, work and whatever kind of work he is required to do. In this matter, the applicant says he was sick and he could not be able to file his appeal in time as he was attending treatment at various hospitals. There is no hard and fast rule that any person who got sick shall be admitted.

On that regard, the applicant's allegation that he was sick is permissible this application for leave to appeal to the District court is grantable and the same is hereby allowed.



  
**W. R. MASHAURI**  
**JUDGE**  
**27/8/2021**

Date: 27/8/2021

Coram: Hon. W. R. Mashauri, J


Appellant: Mr. Ezekiel Advocate

Respondent: Mr. Saliro Advocate

B/c: Jackline

**Court:** Judgment delivered in court in presence of Mr. Ezekiel Advocate on the appellant and Mr. Saliro Advocate for respondent this 27/8/2021. right of appeal explained.



  
**W. R. MASHAURI**  
**JUDGE**  
**27/8/2021**