

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

AT ARUSHA

PC CIVIL APPEAL NO. 22 OF 2020

**(C/F The District Court of Arusha Misc. Civil Application No. 44 of
2019, Originating from Arusha Urban Primary Court, Civil Case No.
194 of 2019)**

PASCHAL ISRAEL..... APPELLANT

Versus

JANETH RUBEN..... RESPONDENT

JUDGMENT

22nd September & 19th November, 2021

MZUNA, J.:

The appellant has lodged this appeal against the Ruling issued by the District court of Arusha in Misc. Civil Application No. 44 of 2019 whereby he was denied his application to file appeal challenging the decision of the Urban Primary court in Civil Case No. 194/2019 out of time.

The background story leading to this appeal is that the respondent and the appellant entered into a contract whereby the appellant agreed to construct the respondent's house, a one storey building. Construction commenced up to renter level but after inspection of the Municipal Engineer, it was found that it was built below standard whereby some cracks were visible even on the fence wall. Cement was not mixed with

In essence, Mr. Mkindi advanced three grounds which he thinks constituted sufficient reasons for the delay:-

First that the delay was contributed by the delay to be issued with copies of the proceedings by the Primary court. He argues that, such lower court proceedings were crucial for preparing sound memorandum of appeal. He insisted that there was no negligence on the part of the appellant. He cited the case of **Mary Kimaro versus Khalfan Mohamed** [1995] TLR 202 to support his proposition.

Second that there is a point of illegality. Mr. Mkindi submitted that Civil Application No. 194 of 2019 which was decided by the Arusha urban primary court, is tainted with illegality because the primary court failed to evaluate the contract entered between the parties and ~~therefore reached to an erroneous decision.~~ It was his view that the district court as the first bite of appeal was duty bound to satisfy itself as to the correctness of the said judgment. The learned counsel cited the cases of **Lyamuya Construction Company Limited versus Board of Registered Trustees of Young women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported), **Principal Secretary Ministry of defence and National Service versus Devram Valambia** [1992] TLR 182.

argued so because the appellant had taken more than two weeks after receiving those proceedings without acting upon them and that is a clear indication that the appellant was not diligent enough to file his appeal/application. To such effect, Mr. Yoyo referred this Court to the case of **Mbogo and Another vs Shah** (1968) E.A 93 among others regarding the issue of illegality. Mr. Yoyo argued that the appellant did not demonstrate such point of illegality worthy of consideration. In rejoinder Mr. Mkindi reiterated his submission in chief.

I thank both counsels for their industrious submissions. I propose to start with the raised point that the appellant was not given the proceedings by the Arusha urban primary court on time to construct his grounds of appeal. This court has been referred to the case of **Mary Kimaro versus Khalfan Mohamed** (supra) where it was held that:-

"A copy of proceedings and a copy of judgment are necessary for the purposes of framing a sound memorandum of appeal."

With due respect to the learned counsel, that case was dealing with record of proceedings to prepare memorandum of appeal not petition of appeal. To the best of my understanding appeals from Primary courts do not require copies of proceedings. Here is where the distinction arises as opposed to appeals which originates from the

versus Khalfan Mohamed (supra), cited by Mr. Hamis Mkindi, with due respect is misplaced.

There was negligence as well as sloppiness as it was so held in the case of **Lyamuya Construction Company Limited vs Board of Registered Trustees of Young women's Christian Association of Tanzania** (supra) which emphasised prerequisite conditions (among others) that there should be "*diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take*". This ground fails.

I revert to the issue of illegality. The learned counsel argued that there is illegality because the primary court magistrate did not properly evaluate the contract between parties which needed attention of the District court. The main point of illegality according to Mr. Mkindi, is that the Primary court did not evaluate properly the contract between parties and therefore reached to erroneous decision. In **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported) the Court of Appeal emphasized that;

"The illegality in the impugned decision should be clearly visible on the face of record."

discretion conferred on him in refusing to grant the application and since there was no misdirection I see no reasons to interfere in view of the case of **Mbogo and Another v. Shah** (supra).

In the final analysis therefore, this appeal stands dismissed as it lacks merit. Appeal dismissed with costs.




M. G. MZUNA,
JUDGE.

19th November, 2021