

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

AT KIGOMA

(APPELLATE JURISDICTION)

(PC) CRIMINAL APPEAL NO. 4 OF 2021

(Arising Misc. Criminal Application No. 5/2021 of the Kigoma District Court, before Hon. E.B. Mushi – RM, Original Criminal Case No. 324/2019 of the Ujiji Primary Court)

EMILIANA KILIMA APPELLANT

VERSUS

YUSTA SEMEI RESPONDENT

JUDGEMENT

10/11/2021 & 13/12/2021

L.M. MLACHA, J.

The appellant, Emiliana Kilima was the complainant at Ujiji Primary Court in Criminal Case No. 324/2019. The respondent, Yusta Semei was the accused person. She was charged of Malicious Damage to property contrary to section 326 (1) of the Penal Code, Cap 16 R.E. 2019. The charge was dismissed for lack of proof and the respondent was set free on 2/2/2021. The appellant could not lodge an appeal for reasons which will be disclosed later. She then discovered that she was late. She lodged Miscellaneous Criminal Application No. 5/ 2021 at the District Court of Kigoma seeking extension of time. The application was dismissed hence this appeal.

The appellant had five grounds of appeal but they can be reduced to one ground of appeal that the district court ought to have given her extension because he accounted for each day of delay.

Hearing was done by oral evidence. The parties being layman could not address the court on the grounds of appeal. They kept on repeating what was said in the primary court. The appellant said that she had good evidence to prove her case while the respondent said that there was none. I think their submissions were misconceived and cannot assist the court. I will leave them aside and be guided by the records.

Appeals from the Primary Court to the District Court are regulated by Part III (b) of the Magistrates Courts Act, Cap 11 R.E. 2019. The appeal period is contained in section 20 (3). It provides that, every appeal to a district court shall be by way of petition and shall be filled in the district court within **30 days** after the date of the decision or order. The law speaks of a petition to be filled in the district court within 30 days. So, an aggrieved party must file his or her petition in the district court within 30 days. The appellant was late so she went to the district court to seek for extension.

Miscellaneous Criminal Application No. 5 of 2021 was presented for filling on 6/4/2021. Counting from 2/2/2021 and less the 30 days provided

for appeal, one can see that there was an added period of 33 days. That is to say, the appellant was late for 33 days. The Law required her to account for each day of delay. See **Azizi Mohamed vs. Republic**, Criminal Application No. 84/07 of 2019 Court of Appeal Mtwara. The affidavit attached to her application in paragraph 5 shows that she could not get a copy of the judgement in time. That, the magistrate (F.P. Ikorongo) was on maternity leave. And that she wrote two letters to request for the same in vain.

My perusal of the records of the Primary Court have come across two letters requesting for a copy of judgment. The first letter is dated 15/2/2021. It was lodged 13 days after the delivery of the decision. The judgement of the primary court was certified ready for collection on 16/3/2021. There is no evidence that the appellant was called to pick it or sent to her through our "Posta Mlangoni". But suppose that she got it on 16/3/2021, can we say that she was late to lodge the appeal? I would say yes but this fact could be a valid ground upon which time could be extended. It is unfortunate that this fact was not considered by the district court.

Where there is evidence that the judgment was certified ready for collection on a particular date, the appeal period should start to run from

this date for a copy of the decision is a necessary document in the preparation of an appeal. This in my view, is a valid ground for extending the time.

In my analysis therefore, I have the view that, the delay was caused by failure to supply a copy of the judgement and not any negligence on the part of the appellant. With respect, the district court erred in failing to extend time. The application is granted. The Appellant is given 14 days from today, within which to lodge her appeal at the district court. It is ordered so.




L.M. Mlacha

JUDGE

13/12/2021

Court: Judgment delivered in the presence of both parties.




L.M. Mlacha

JUDGE

13/12/2021