

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

PC. CIVIL APPEAL No. 69 OF 2021

*(Arising from the Misc. Civil Application No. 50 of 2021 Originating from
Mwanza Urban Primary Court in Civil case No. 15 of 2017)*

MICHAEL SHILOLE----- APPLICANT

VERSUS

ELIZABETH S. MAGERA----- RESPONDENT

RULING

Last Order date: 18.05.2022

Ruling Date: 28.06.2022

M. MNYUKWA, J.

The appellant Michael Shilole is appealing to this court against the decision of the District Court of Nyamagana in Misc. Civil application No. 50 of 2021 dated 05.11.2021 which was dismissed. It goes that; the appellant instituted a matrimonial case in Mwanza Urban Primary court vide Civil Case no 15 of 2021 where the court entered judgment against his favour. Dissatisfied and out of time to appeal, the appellant approached the District Court of Nyamagana in Misc. Civil Application No. 50 of 2021 praying the trial court to extend time to file the appeal. The

district court dismissed the application on the ground that the applicant failed to give sufficient reasons. Dissatisfied, the appellant filed this instant appeal with two grounds of appeal that: -

- I. That the District Court of Nyamagana erred in law and in fact for failure to consider the issue of illegality in determining the application for extension of time.*
- II. That the District Court of Nyamagana erred in law and in fact for failure to exercise judicial discretion in granting leave to the appellant who had sufficient reasons.*

The appellant was represented by Nestory Joseph learned Advocate and the respondent afforded the service of Hidaya Haruna learned advocate. When the matter was before the court, I noted legal discrepancies in the filing of this appeal and I proceeded to require parties to address the court on two issues.

- i. Whether there was compliance with section 25(3) of the Magistrates' Courts Act, Cap 11 RE: 2019, and*
- ii. Whether the appeal was competent before the court.*



The appellant was the first to toss the ball, whereas Mr Nestory submitted that, the appeal was competent before the court for it was filed in accordance with the law. Referring to section 25(3) of the Magistrates' Courts Act, Cap 11 RE: 2019, he insisted that the same provision does not apply in this appeal. He avers that, the district court did not exercise its appellate or revisional jurisdiction for the referred section to apply rather it was exercising original jurisdiction. He insisted that, this appeal did not fall under section 25(3) of the Magistrates' Courts Act, Cap 11 RE: 2019, but rather falls under Order XXXIX Rule 1(2) of the Civil Procedure Code, Cap 33 RE: 2019. He went on averring that, in the alternative, if the court finds that the appeal is incompetent before the court, it is curable for the court to have jurisdiction to entertain the matter.

Responding to the appellant's submissions, Ms. Hidaya Haruna submitted that, the Magistrates' Courts Act, Cap 11 RE: 2019 and the Civil Procedure (Appeals and Proceedings Originated in the Primary Courts) Rules GN. No. 312 of 1964 is silent as to where the appellant can lodge his appeal. She avers that section 25(3) of the Magistrates' Courts Act, Cap 11 RE: 2019, deals with the appeals where the district court exercises its appellate jurisdiction. Reverting in this application at hand she avers



that in the matter of practice, this application was to be lodged to the district court for the purpose of calling for records and transmitting to this court. Referring to Rule 3 Civil Procedure (Appeals in Proceedings Originating in the Primary Courts) Rules, she insisted that since the application for extension of time was filed at the district court accompanied by the grounds of appeal and since the district court examined the grounds, she insisted that the appeal was to be filed at the District Court for it to bring the records to this court.

Rejoining, the appellant insisted that the respondent's learned counsel submissions were not backed up by any case law but rather based on the matter of practice, therefore, insisting this court not to consider. He went on insisting that the District Court was exercising its original jurisdiction. He retires prays this court if at all it will be found that the appeal was filed out of the prescribed procedure, the appellant to be given chance to file it properly.

Having been called up to address the court the parties were able to submit as to whether this appeal complied with section 25(3) of the Magistrates' Courts Act, Cap 11 RE: 2019 and whether the appeal is competent before this court.



The appellant's learned counsel insisted that the appeal is properly before this court for, at the time of determining the extension of time by the trial court, the District Court was exercising its original jurisdiction and section 25(3) of the MCA does not apply. On the side of the respondent's learned counsel, come in another way round that the appeal is not properly before this court for the reasons that the application to the District Court was filed according to Rule 3 of the Civil Procedure (Appeals originating from the Primary court) Rules and therefore, rule 25(3) applies.

In determining the issue above, and before I pick a side from the submissions by the leaned advocates, I am duty-bound to first find out if this appeal has its origin in the primary court. Going to the pleadings, the records are clear that the application for extension of time in Misc. Civil Application No. 50 of 2021 before the District Court, originated from Mwanza Urban Primary Court in Civil Case No. 15 of 2017. The same can be traced to the pleadings before this court and the trial court's records. It is my finding that, the extension of time sought by the applicant before Nyamagana District Court, which is the subject matter of this appeal originated from Mwanza Urban Primary Court in Civil Case No. 15 of 2017



and therefore, the proper court to file this appeal was before Nyamagana District Court as required by the law.

I say so because, as it is earlier on noted that it is undisputed that the matter originated from the primary court and in the present appeal, the appellant appealed against the Ruling of the of the District Court. This is also vividly seen in his prayer, where the appellant prays before this court for his appeal to be allowed by granting and setting aside the Ruling of the District Court of Nyamagana and the appellant be granted leave to appeal out of time to the District Court of Nyamagana against the decision of Mwanza Primary Court in Civil Case No 15 of 2017.

The law is clear that, when this court is exercising its Appellate and Revisional Jurisdiction in Relation to Matters Originating in Primary Courts, the proper court to file the appeal is the District Court. Going to section 25(3) of the Magistrates' Courts Act, Cap 11 RE: 2019, Cap 11 it is states that:

25.- (1) N/A

(2) N/A

(3) *Every appeal to the High Court shall be by way of petition and shall be filed in the district court from*



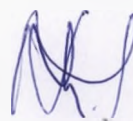
the decision or order in respect of which the appeal is brought:

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.

This requirement is a must, for once the appeal is lodged before the District Court, the available records of the lower courts can be easily tracked and transmitted before this court as it is provided for under section 25(4) of the Magistrates' Courts Act, Cap 11 RE: 2019, which reads as hereunder:

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

In this application at hand, as the matter is originated from the primary court and the application for extension of time to file an appeal against the decision of the primary court is filed in the District Court, the law applicable is the Magistrates' Courts Act, Cap 11 RE: 2019 and not the Civil Procedure Code, Cap 33 R: 2019 as it was stated by the learned



counsel of the appellant. Thus, since in our case at hand the records of the lower courts are not attached, the application is not properly before this court.

In fine, I am accord with the respondent's learned counsel that this appeal ought to be filed in the District Court and I, therefore, find that this appeal is improperly before this court and I proceed to strike it out with no order as to costs.

It is so ordered.




M.MNYUKWA
JUDGE
28/06/2022

Court: Ruling delivered in the presence of the parties' counsel.


M.MNYUKWA
JUDGE
28/06/2022