

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY**

AT MOSHI

PC CIVIL APPEAL NO. 16 OF 2021

*(C/f Civil Appeal No. 6 of 2021 in the District Court of Moshi, Original
Civil Case No. 45 of 2021 Moshi-Urban Primary Court)*

FRANK JAPHET MWAKALOWA APPELLANT

VERSUS

NURU ABDALLAH KWAY.....RESPONDENT

16/3/2022 & 10/5/2022

JUDGEMENT

MWENEMPAZI, J

The appellant herein is aggrieved by the decision of the District Court of Moshi in Civil Appeal No. 6 of 2021. In that decision the Respondent herein was the appellant and the appellant was the Respondent.

The case commenced in the Primary Court of Moshi – Urban through Civil Case No. 45 of 2021. There the Respondent was claiming against the appellant herein for payment of Tshs. 2,040,000/- (Two million and fourth thousands only) being payment of money for the days a motor vehicle, earlier hired by the appellant to transport logs from Rundugai to Newland – Moshi, stayed at the police station Hai following the arrest due to invalid licenses of tree harvesting. In the opinion of the respondent those 25 days stayed without work the respondent would have earned the claimed amount.

The respondent lost in a case and he appealed to the District Court against the decision of the Primary that decision was overruled and the appeal was allowed. The decision was delivered on 23/9/2021.

The appellant was dissatisfied with the decision of the appellate District Court. Thus, he filed this appeal on the 28/10/2021. Two grounds of appeal have been raised. The same are:-

1. That the trial court magistrate erred both in law and facts by not considering the evidence that presented before him by the appellant before the court.
2. That trial magistrate erred in facts and law for not considering the evidence of breach of contract which caused loss to the appellant that was adduced before him by the appellant before the court.

At the hearing Materu Advocate appeared for the appellant and Innocent Msaki Advocate appeared for the Respondent.

During submission I noted a submission on a point of law that the appeal in the District Court was time barred which touches on the jurisdiction of the court.

This being a court of record, I had to satisfy myself on the point. The appellant argued that the law provides for days to appeal which are thirty (30) days and the appeal shall be by way of petition. That is according to Section 20 (3) of the Magistrates Courts Act, Cap. 11 R.E. 2019. The judgment in the Primary court was delivered on 16/4/2021 but the

Respondent filed an appeal on 21/5/2021. At the time 35 days had lapsed. Under the circumstances the appeal was out of time.

Thought the Respondent filed an application for extension of time; the appeal was heard without determining the time within which the appeal was filed or there being an order extending that time.

The Respondent has argued that the application was not heard as the appellant kept on absconding for the three consecutive days.

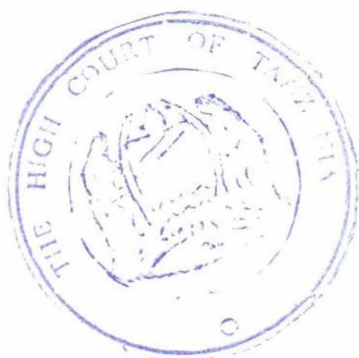
I have read the record and the decision of the court (Appellate District Court) I could not see an order extending time and obviously, the appeal was heard without first clothing the District Court with necessary jurisdiction.

For the reasons I have a strong view the appeal was heard with the court which had no necessary jurisdiction.

Under the circumstances whatever was done is null and void for lack of necessary jurisdiction.

The appeal is thus allowed for the sole reasons with no order as to costs.

It is ordered accordingly.




T.M. MWENEMPAZI
JUDGE
10/5/2022