

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

AT KIGOMA

(DC) CIVIL APPEAL NO. 5 OF 2022

(Originating from Kigoma District Court Civil Case No. 5/2021)

KALINZI ORGANIC COFFEE GROWERS..... APPELLANT

VERSUS

TANGANYIKA COFFEE CURING COMPANY LTD1ST RESPONDENT

KALINZI COFFEE FARMERS GROUP2ND RESPONDENT

RULING

23/5/2022 & 25/7/2022

L.M. Mlacha,J

The appellants Kalinzi Organic Coffee Growers filed an appeal against the respondents Tanganyika Coffee Curing Company Ltd and Kalinzi Coffee Farmers Group. Mr. Ignatus Kagashe appeared for the appellant while Mr. Elikunda Kipoko and Mr. Sadiki Aliko appeared for first and the second respondents respectively. Hearing was conducted through the virtual court services under the **Judicature and Application of Laws (Remote Proceedings and Electronic Recording) Rules 2021, GN 637/2021.**

Mr. Elikunda Kipoko was in the High Court Moshi while Mr. Kagashe and Sadiki were in their respective offices at Kigoma.

When the appeal was called for hearing, with a prior notice, Mr. Elikunda Kipoko came out with two preliminary points of objection which read thus:

- a) The appeal is time barred.
- b) The appeal is defective for being accompanied with a defective Ruling and order.

Counsel submitted that section 42(3) of the Magistrates Court Act, Cap 11 R.E. 2019 provides a right of appeal from decisions of the district court but does not provide the appeal period. In such a situation, counsel submitted, item 2, part II of the schedule to the Law of Limitation Act, Cap 89 R.E 2019 has to come into play to fill the gap. It prescribes for a period of 45 days, he said. He went on to submit that this appeal was lodged after 85 days making it time barred. He referred the court to **Namahonga Amos and 2 others v. Hamis Abdalah and another**, (DC) Civil Appeal No. 8 of 2015 (High Court Mtwara) where it was said that an appeal of this type falls under part II of the Act. He also referred the court to **Alex Senkoro and 3 others v. Eliambuya Lyimo**, (CAT) Civil Appeal No. 16 of 2017 in

the same reasoning. Counsel proceeded to submit that this appeal is not the creature of the Civil Procedure Code Act Cap 33 R.E 2019 (the CPC) but the Magistrates court Act (the MCA) as such it was supposed to be filed within 45 days.

In the second limb of objection counsel submitted that the appeal is bad in law because it is against a ruling and an order not a judgment and decree. He said that there is no law in this country which gives a right of appeal against a ruling. Appeals have to lie against judgments and decrees, he said. He went on to submit that section 74 and order XL rule 1 of the CPC have appeals against rulings and orders but not of this type. He said that the current ruling is not one of those which are mentioned in the provisions. He stressed that a ruling dismissing a suit is not appealable. He referred the court to **Hussein Ally Kasweswe v. Mzee Kasweswe [1988] TLR 252** on this point.

Counsel went on to submit that the appeal is defective because the names of the parties were recoded wrongly. The second respondent was recoded as Kalinzi Coffee Farmer without an 's'. The memorandum of Appeal has an 's' and the decree has an 's'. He was supposed to rectify the errors before

lodging the appeal, he said. Counsel argued the court to dismiss the appeal.

It was the submission of Mr. Kagashe in reply that the CPC apply in the District Court, RM'S Court and High Court as per section 2. The CPC does not specify the period of appeal making it necessary to go to item 1, part II of the schedule to the Law of Limitation Act which has a period of 90 days, he said. He proceeded to say that if Mr. Kipoko had made a perusal he could see that the appeal was lodged earlier for we are no longer guided by court stamps but the Electronic Filing Rules.

On the second point counsel had the view that the Law has given a right of appeal against any decision of the district court whether it is a ruling or judgment. There is a right of appeal where the ruling has determined the rights of the parties to the finality, he said.

On the defects of names, counsel had the view that those are minor issues which can be neglected under the overriding objective (to facilitate the just expeditious, proportionate and affordable of civil disputes - section 3A of the CPC). He referred the court to **Christina Mrimi v. Cocacola Kwanza**

Bottles Ltd, Civil Appeal No. 12 of 2002 adding that spelling of names does not affect rights of parties.

Mr. Sadiki Aliko submitted on the second point only. He said that Mr. Kagashe was supposed to seek rectification of errors on defects on names before lodging the appeal. He said that the overriding objective principle is not a panacea to cover mistakes. The rules of procedure must be followed, he stressed.

Mr. Elikunda Kipoko made a rejoinder asked the court to disregard the case of **Christina Mrimi** (supra) saying that it is distinguishable. He stressed that the appeal did not arise from the CPC but the MCA making it Mandatory to apply item 2 part II of the schedule to the Law of Limitation Act.

I will start with limitation. There is no dispute that the appeal originates from a decision of the district court of Kigoma made in Civil Case No. 5 of 2021. The decision was delivered on 16/11/2021. Counting from this date up to 11/2/2022 when this appeal was lodged one gets 85 days as submitted by counsel. Mr. Kipoko has the view that the appeal is falling under item 2 of part II of the schedule to the Law of Limitation which

provides for a limitation period of 45 days. With that in mind counsel has the view that the appeal is time barred. Mr. Kagashe is taking the matter to item 1 which has a period of 90 days and has the opinion that the appeal is not time barred. Between the counsel there is an issue whether this is an appeal falling under the MCA or CPC.

Having examined the record and facts closely, I have the view that it is difficult to say that the appeal originates from the MCA alone. All civil matters in the district court are governed by the MCA and CPC. In other words, both the Magistrate's court Act and the Civil Procedure Code Act apply in civil matters at the district court. I think that there cannot be a civil case in the district court other than probate matters outside the CPC. Guided by the fact that there cannot be a Civil Case at the district court in the absence of the Civil Procedure Code, I am convinced by the submission of Mr. Kagashe that the relevant provision is item 1 of the Law of Limitation Act 90 days and not otherwise.

There was also an argument that the appeal is bad in law because it is based on a ruling and drawn order, not a judgment and decree. Counsel cited section 74 and rule 1 of order XL of the CPC saying the order of the district court is not one of the orders mentioned therein and therefore not

appealable. I have considered this point. With respect to the views of the counsel, I don't agree with him. I share the views of Mr. Kagashe that the ruling (or order) is appealable because it decided the rights of the parties conclusively. The case was dismissed, no longer in court. If the case was dismissed, the order or ruling dismissing the case was appealable because it decided the case to its finality. Things could have been different if the ruling or order was interlocutory in nature.

The last point was on difference of names with reference to the second respondent. The plaint has the name Kalinzi Coffee Farmers Group (KACOFA). The Ruling dismissing the suit has the name Kalinzi Coffee Farmer Group. The drawn order has the name Kalinzi Coffee Farmers Group. It was submitted by both Mr. Elikunda Kipoko and Sadiki Aiki that the appellant ought to have sought rectification of the errors before coming to this court. I agree with them. With respect to Mr. Kagashe, I don't think that the errors can be neglected or cured under the overriding objective principle.

Speaking of the overriding objective, the Court of Appeal had this to say in **Jeremiah L. Kunsindah Vs Leila John Kunsindah (CAT)**, Civil Appeal No. 260 of 2017 page 5-6.

"The overriding objective principle was not meant to be a magic wand for those who disregard procedural rules."

See, **District Executive Director Kilwa District Council v. Begota Engineering Limited**, Civil Appeal No. 37 of 2017 and **Njake Enterprises Limited vs Blue Rock Limited & Another, (CAT)** Civil Appeal No. 69 Of 2017. In Njake Enterprises Ltd it was said as follows at page 11:

*"Also, the overriding objective principle **cannot be applied blindly** on the mandatory provisions of the procedural law which goes to the very foundation of the case". (Emphasis added)*

Difference of names is a serious issue. It goes to the rights and liabilities of parties. It is not an issue to be neglected or simply brushed aside under the overriding objective principle. If not settled at an early stage it may cause serious problems in the end particularly during the execution stage. The names of the parties have to be certain to avoid future problems. And the usual practice as correctly pointed out by Mr. Kipoko and Sadiki is to seek rectification from the court which made the errors.

For the defect on the names of the second respondent, the appeal is found to be improperly before the court and struck out. I will make no order for costs. It is ordered so.



A handwritten signature in blue ink, appearing to be "L.M. Mlacha", written over a horizontal line.

L.M. Mlacha

Judge

25/7/2022

Court: **Court:** Ruling delivered through virtual court services.

Right of appeal explained,



A handwritten signature in blue ink, appearing to be "L.M. Mlacha", written over a horizontal line.

L.M. Mlacha

Judge

25/7/2022