

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

CIVIL APPEAL NO. 252 OF 2021

ABDULHAMAN MNETE APPELLANT

VERSUS

MOHAMMED ALLY HUSSEIN RESPONDENT

***(Appeal from the decision of the District Court of Temeke at
Temeke in Civil Appeal No. 94 of 2020)***

RULING

25th and 25th April, 2022

KISANYA, J.:

This is an appeal against the decision of the District Court of Temeke in the exercise of its appellate jurisdiction. It originated from the decision of the Primary Court of Temeke at Buza in which the respondent successfully sued the appellant and was awarded USD 3,500 equivalent to TZS 8,200,000 being special damages arising from the claim for breach of contract.

The appellant first appeal to the District Court of Temeke was dismissed for want of merit. Still aggrieved, the appellant filed the present appeal. It was contested by the respondent who raised a notice of preliminary objection on the points of law to the effect that:

- 1. The appeal is incompetent for being filed out time prescribed by section 25(1)(b) of the Magistrates' Courts Act [Cap. 11, R.E. 2019 (henceforth the MCA).*
- 2. That the appeal was filed in contravention of section 23(3) and (4) of the MCA.*

When this appeal came up for hearing before the predecessor judge, the respondent prayed to withdraw the preliminary objections. His counsel informed the Court that the respondent's counsel had shown him that the appeal was filed electronically on 17th June, 2021. In the circumstances, he was of the view that it was not practicable for the appellant to register the appeal before the trial court. Having heard the respondent's counsel, the predecessor judge ordered as follows:-

"P.O is marked withdrawn subject to the appellant bring a copy of online record which prove date of filing."

When this matter was placed before me for hearing, the appellant failed to appear. On the other side, the respondent who was present in person had the legal services of Mr. Kyondo Mtumwa, learned advocate.

Mr. Mtumwa prayed to submit in support of the preliminary objection. Having considered that the appellant's counsel had a printout generated from Judiciary Statistical Dashboard System II (JSDSII) which was to the effect that the appeal was filed on 17th June, 2021, I granted him leave to address the Court on the objection.

Submitting on first limb of objection, Mr. Mtumwa argued that the impugned decision was required to be lodged within thirty days from 17th May, 2021. His argument was based on the provision of section 25(1)(a) of the Magistrates' Courts Act [Cap. 11, R.E. 2019] (the MCA). Thus, he was of the view that the appeal was filed out time for about 31 days.

With regard to the second limb of objection, Mr. Mtumwa argued that the appeal is incompetent on the account that the petition of appeal was lodged to this Court thereby contravening section 25(3) of the MCA.

That said, the learned advocate urged me to dismiss the appeal with costs.

I have considered the submissions made by the learned counsel for the respondent. The issue for determination is whether the objection is meritorious.

It is common ground that the decision subject to this application was delivered by the District Court of Temeke in the exercise of its appellate jurisdiction against the decision of the Primary Court. Pursuant to section 25(1)(b) of the MCA, an appeal against the decision of the District Court in the exercise of its appellate jurisdiction is required to be lodged within thirty (30) days from the date of impugned decision.

It is on record that the judgment subject to this appeal was delivered on 17th May, 2021. In view of section 25(1)(b) of the MCA, the time within which to appeal against that impugned judgment lapsed on 16th June, 2021. However, it is on 12th July, 2021 when the appellant paid the court filing fees for the present appeal. Even if it is considered that the appeal was filed electronically on 17th June, 2021 as indicated in the printout produced by the appellant's counsel, I am convinced that it was lodged out of time for one day. It is a trite law

that every day of delay must be accounted for. Unless the said delay is accounted for, this Court has no mandate to determine appeal lodged out of time.

I would have dismissed this appeal for being time barred. However, the second limb of objection suggests that the appeal is incompetent. When the parties appeared before the predecessor judge, the appellant counsel did not dispute that the petition of appeal was lodged to this Court. Such fact is also reflected in the record whereby, this Court was inclined to issue an order of calling for original case file from the lower courts. According to section 25(3) and (4) of the MCA, the petition of appeal must be filed in the district court which passed the impugned decision or order. It is the respective district court which dispatches the petition of appeal together with the record of the proceedings in the primary court and the district court to the High Court.

The said provisions stipulate:

"(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.

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

The above cited provision is couched in mandatory terms. Thus, it must be complied with a person aggrieved by the decision of the District Court in the exercise of its appellate jurisdiction. It is also my considered view, the requirement of lodging the petition of appeal before the district court which passed the impugned decision or order cannot be deviated by electronic filing of cases.

In the light of the foregoing, this appeal is found to be incompetent for contravening section 25(3) and (4) of the MCA. It is accordingly struck out. Considering that the respondent had prayed to withdraw the preliminary objection, I make no order as to costs.

DATED at DAR ES SALAAM this 25th day of April, 2022.



S.E. Kisanya
JUDGE