

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

PC. CIVIL APPEAL NO. 25 OF 2021

*(Arising from the District Court of Meatu at Mwanhuzi in the Civil Appeal
No. 5 of 2021, originating from Civil Case No. 15 of 2021 Kimali Primary
Court)*

LAMECK MADUKA.....APPELLANT

VERSUS

MAGANGA NJILE.....RESPONDENT

RULING

S.M. KULITA, J.

The Appellant herein lodged an appeal against the decision of Meatu District Court in Civil Appeal No. 5 of 2021 delivered on the 7th day of June, 2021. The said appeal at the District Court originates from the Civil Case No. 15 of 2021 Kimali Primary Court. Aggrieved with the decision of the District Court, the Appellant lodged this appeal on the 22nd day of July, 2021.

In his reply to the Petition of Appeal Advocate for the Respondent Mr. Kabisi J. Mahona raised a preliminary Objection that the appeal is untenable for being hopelessly time barred.

In his submission in support of the Preliminary Objection, Advocate for the Respondent, this time being Mr. Majura Maghembe stated that according to section 25(1)(b) of the Magistrates' Courts Act [Cap 11 RE 2019] appeals from the District Court to High Court for the cases originating from Primary Court should be lodged at the District Court in 30 (thirty) days period from the date of decision by the District Court.

He submitted that the current appeal was lodged on the 22nd day of July, 2021 for the judgment of the District Court delivered on 7th day of June, 2021. He said that, it is 15 (fifteen) days out of the prescribed time which is 30 days' time period. The counsel concluded by praying the court to dismiss the appeal with costs for being time bared.

In his reply thereto the Appellant stated that the reason for delay to lodge the appeal in time at the District Court is that, the said District Court was late in supply him the copy of Judgement. He alleged that he had sought to be supplied with it since 12/06/2021, but he was supplied on 24/06/2021. He further averred said that the said copy of judgment was necessary for him to prepare this appeal, hence he was to wait for the supply before he prepared and lodged the appeal.

The Appellant asserted that, in that sense computation of time for appeal commences on that 24/06/2021, the date that he was supplied

with the copy of judgment. The fact that he lodged the appeal on the on the 22/07/2021 it is within the time limit. He further said that, as the delay to receive the copy of judgment was faulted by the court, he prays for the Preliminary Objection to be dismissed with costs.

In the rejoinder, the Respondent's Counsel, Mr. Maghembe submitted that, for the appeals originating from Primary Court there is no requirement of attaching the copy of Judgment or Ruling of the District Court. Hence the reason for delay is unjustifiable. The Counsel referred the court to Rule 4 of the Civil Procedure (Appeals in Proceedings Originating in Primary Court) Rules, GN No. 312 of 1964.

From the above submissions there is no dispute that the appeal has been lodged after the lapse of 30(thirty) days period from the date of delivery of judgment at the District Court. The appeal at hand was lodged on the 22nd day of July, 2021 while the judgment at the District Court was delivered on 7th day of June, 2021, that is 15 (fifteen) days out of the prescribed time of 30 days. **Section 25(1)(b) of the Magistrates' Courts Act [Cap 11 RE 2019]** provides;

*"Save as hereinafter provided, in any other proceedings any party, if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, **within thirty days***

after the date of the decision or order, appeal there from to the High Court; and the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired" (emphasis is mine).

Having noted that the prescribed time limit to lodge the appeal at High Court for the cases originating from Primary Court being 30 days, the issue is, when is it starts to be computed, from the date of delivery of the District Court's decision or from the date of supply of the copy of the impugned decision? **Rule 4(1) of the Civil Procedure (Appeals in Proceedings Originating in Primary Court) Rules, GN No. 312 of 1964** states;

"Every petition of appeal shall set out precisely and under distinct heads numbered consecutively the grounds of objection to the decision or order appealed against and shall be signed by the appellant or his agent"

Therefore, unlike the appeals for the cases originating from the District Courts and the Resident Magistrate's Courts, the above quoted provisions do not provide the requirement of attaching the copy of the impugned decision of the District Court for the appeals lodged at High Court whose origin is Primary Court. I can even observe in his pleading

(petition of appeal), the Appellant has not attached the copy for that said document, which is not fatal. In **RAJAB A. RAJAB V. HAMIDI M. TULI & ANOTHER, PC. Civil Appeal No. 33 of 2005, High Court, DSM Zone (unreported)** it was held that the said Rule 4(1) does not provide for the exclusion of any period in computing the said period of 30 days.

In the case of **SOPHIA MDEE V. ANDREW MDEE AND 3 OTHERS, Civil Appeal No. 5 of 2015, CAT at Arusha (unreported)** the issue of attachment of the copy of judgment in the petition of appeal for the cases originating from Primary Court was discouraged as follows;

"Attaching a petition of appeal with a copy of judgment is not a legal requirement in matters arising from Primary Court. Rather it is a legal requirement on matters originating from District Courts and Courts of Resident Magistrate as it is provided for under the Civil Procedure Code"

The same was held in **GREGORY RAPHAEL V. PASTORY RWEHABULA [2005] TLR 99**. The fact that the Appellant ought not to wait for the copy of judgment in order to lodge his appeal at High Court, he should not hide himself under the umbrella of waiting to be supplied with it, as a justification for the delay.

In upshot, I find the Preliminary Objection meritorious, that the Appellant lodged this appeal after the lapse of the prescribed period of 30 (thirty) days without leave of the court, hence dismissed. The Appellant to bear the costs.



S.M. KULITA
JUDGE
05/07/2022

DATED at Shinyanga this 5th day of July, 2022.



S.M. KULITA
JUDGE
05/07/2022