

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA DISTRICT REGISTRY

AT BUKOBA

CIVIL APPEAL NO. 11 OF 2021

(Arising from Civil Application No. 07 of 2021 Muleba District Court of Muleba and originated from Probate and Administration Cause No. 5 of 2020 at Muhutwe Primary Court).

JAKSON ASTERIA.....APPELLANT

VERSUS

FAUSTINE MWEMEZI.....RESPONDENT

JUDGMENT

11/07/2022 & 05/08/2022
E. L. NGIGWANA, J.

This appeal arises from the ruling of the District Court of Muleba at Muleba in Civil Application No. 07 of 2021 which dismissed the appellant's prayer for extension of time to appeal out of time to the District Court of Muleba against the decision of Muhutwe Primary Court in Probate and Administration Cause No. 5 of 2020 handed down on 07/01/2021, where the appellant unsuccessfully Petitioned for letters of administration of the estate of the late Steria M. Njuwa who died in 2013. The application was dismissed on the ground that the applicant now appellant had not demonstrated sufficient cause to warrant grant of extension of time.

Dissatisfied with decision of the District Court, the appellant has knocked the doors of this court armed with two grounds of appeal which were coached as follows;

- 1. That, the District Court immensely erred in law by not granting time to appeal out of time while the reasons given during the hearing are genuine.*
- 2. That, the District Court misdirected itself by failing to consider to a copy of a letter by the appellant seeking to have his copy of judgment, yet the court delayed to give him a copy of judgment which resulted into miscarriage of justice against him.*

Wherefore, the appellant is praying that this appeal be allowed, and the decision of the District Court be set aside. At the hearing of this appeal, both parties appeared in person, unrepresented. When called upon to submit, the appellant contended that he failed to appeal within time because the copy of judgment was not availed to him within time because the judgment of the Primary court was delivered on 07/01/2021, and on 22/01/2021, he wrote a letter requesting for a copy of judgment, but the same was supplied to him on 12/02/2021, and he lodged application for extension of time on 22/02/2021. He added that, the copy of judgment was necessary in the preparation of the grounds of appeal. He ended his submission that it is in the interest of justice that this appeal be allowed.

On his side, the respondent conceded that the judgment was delivered on 07/01/2021, and the right of appeal was explained to them, but the applicant did not appeal within 30 days prescribed by the law, and no sufficient cause demonstrated by him to warrant extension of time, that is why, the application was dismissed.

Having heard submissions of both parties, the issue for determination is whether late supply of a copy of judgment of the Primary Court Constitutes sufficient ground for extension of time to appeal out time.

In the instant matter, the District Court in its ruling was guided by the Civil Procedure (Appeals originating in Primary Courts) Rules, 1963 G.N. No. 312 of 1964 which reads as follows;

"4(1) Every Petition of Appeal to a District Court from the decision or order of Primary Court and every Petition of Appeal to the High Court from a decision or order of a District Court in the exercise of its appellate or revisional jurisdiction shall set out precisely and under distinct head numbered consecutively the grounds of objection to the decision or order appealed against and shall be signed by the appellant or his agent"
(Emphasis added).

The District Court was also guided by the decision of this court in the case of **Gregory Raphael versus Pastory Rwehabula** [2005] 2005 TLR 99 where it was held that; attachment of copies of decree or judgment along with the petition of appeal is not a legal requirement, and that the filing process is complete when the Petition of Appeal is instituted and upon payment of requisite fee. The District Court also made reference to the case of **James Petro Ndaki versus Nyamala Wangaluke**, Probate Civil Appeal No. 9 2019 of which, the same position was maintained. The District Court ended its ruling as follows;

"Therefore it is clear that the document that the applicant was allegedly waiting for was of no use in his journey to this court. Thus this court is of the considered opinion that the applicant provided no sufficient cause to grant him leave to appeal out of time. The application is accordingly dismissed".

There is no doubt that pursuant to section 20 (3) of the Magistrates Courts Act Cap. 11 R: E 2019, the time within which to appeal against the decision

of the Primary Court is thirty (30) days after the date of the impugned decision or order. The section provides as follows;

"Every appeal to a District Court shall be filed in the District Court within thirty days after the date of the decision or order against which the appeal is brought".

The decision of the Primary Court was delivered on 07/01/2021; therefore the appeal ought to have been lodged on or before 06/02/2021. The Appellant was aware that he was out of time, hence lodged application for extension of time to file appeal out of time stating the ground that he was not supplied with the copy of judgment within time.

Where no appeal has been filed within the prescribed time of thirty days, it does not mean that the doors for appeal are completely closed. The aggrieved party may still appeal out of time after obtaining extension of time.

It should be noted the well-established principle is that an application for extension of time is entirely in the discretion of court to grant or refuse and that extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause. See **Mumello v. Bank of Tanzania** [2006] E.A. 227.

Section 20 (4) of the MCA provides that;

"20 (4):- Notwithstanding the provision of subsection (3)-

- (a) **The District Court may extend time for filing an appeal either before or after such period has expired; and***
- (b) If an application is made to the District Court the said period of thirty days or any extension thereof granted by the District Court,*

the district may permit the appellant to state the grounds of appeal orally and shall record them and hear the appeal according."

However, what constitutes sufficient cause has been expounded in the case of **Oswald Masatu Mwizarubi versus Tanzania Processing Ltd**, Civil Application No.13 of 2010 the Court of Appeal had this to say;

"What constitutes good cause cannot be laid down by any hard and fast rules. The term good cause is a relative one and is dependent upon party seeking extension of time to prove the relevant material in order to move the court to exercise its discretion".

I am alive that in appeal which mandatorily require attachment of a decree or copy of judgment, the position is now clear that the time spent waiting for the said documents has to be excluded from computation of time limitation. In **the Registered Trustees of the Marian Faith Healing Centre @ Wanamaombi versus, the Registered Trustees of Catholic Church Sumbawanga Diocese**, Civil Application No. 64 of 2007, the Court of Appeal had this to say;

"That period with a party has spent waiting to be supplied with the copy of judgment and decree has to be excluded from computation of time Limitation".

I am also alive that the law of Limitation does not apply in matters originating in Primary Courts. At the same time, the Civil Procedure (Appeals in proceedings originating in Primary Courts) Rules 1964 G.N. No. 312 of 1964 does not state anything about the Limitation or the mode of counting the limitation. In other words, it does not provide whether or not the time for

obtaining copies of the judgment or decree appealed against should be excluded in computation of the period of Limitation.

I firmly subscribe to the position maintained in **Abdala S. Mkumba versus Mohamed I. Lilame** [2002] TLR 326, Gregory **Raphael versus Pastory Rwehabula** [2005] 2005 TLR 99, **James Petro Ndaki versus Nyamala Wangaluke**, Probate Civil Appeal No. 9 2019, and Isack **Kahawa versus Bandora Salum**, (PC) Civil appeal No o6 of 2020, HC – Shinyanga Registry (unreported) that; attachment of copies of decree or judgment along with the petition of appeal is not a legal requirement, and that the filing process is complete when the Petition of Appeal is instituted in the District Court and upon payment of requisite fee.

However, according to Rule 4 (1) of G.N. No. 312 of 1964 (supra), every Petition of Appeal to a District Court from the decision or order of the primary court **shall set out precisely and under distinct heads numbered consecutively the grounds of objection to the decision or order appealed against.**

Reading carefully the here in above rule, it also goes without saying that the Petition of Appeal **must set out clearly, precisely and specifically the grounds of appeal. Now the first question is that; how can the appellant process the well informed grounds of appeal without recourse to the judgment or record of proceedings of the court whose decision he/she intends to challenge?**

Considering the fact that most of our people are lay persons, the 2nd question is how can they seek legal assistance from legal practitioners/lawyers without

having a copy of judgment which is very important in the exercise of drawing the well informed and sound grounds of appeal?

The answer is in the negative because the copy of judgment is a very important document from which sound grounds of appeal can be drawn. See **Yahaya Rashidi and Another versus Kassim Masudi and 11 Others**, PC Civil Appeal No. 18 of 2021 HC – Kigoma (Unreported) and **Mohamed Waziri versus Aisha Juma**, (PC) Matrimonial Appeal No. 03 of 2019 – HC- Dodoma (unreported).

In the matter at hand, it is not disputed that the Primary court judgment was delivered on 07/01/2021. It is also not disputed that the appellant was supplied with the copy of 12/02/2021, and according to thirty days rule, he ought to have lodged his appeal on or before 06/02/2021. In other words, the appellant was supplied with the copy of the judgment after the expiry 30 days.

In my view, For the interest of justice, where a party writes a letter immediately after delivery of the Primary Court decision, requesting to be supplied with the copy of judgment, or order but, the same is not supplied to him or her before the expiration of appeal time prescribed by the law which is 30 days, to assist him/her to process the well informed grounds of appeal, such a delay constitutes a good ground for extension of time to appeal out of time. In my view, the test should be intention disclosed in his/her letter. The applicant must state clearly that he/she is requesting the copy of judgment/order for appeal purposes/to assist him/her in preparation of the grounds of appeal.

In the instant case, it true that the appellant on 22/01/2021 that is to say two weeks after the decision of the Primary Court, wrote a letter requesting for the copy of judgment, but the message contained therein does not indicate that the appellant needed the copy of judgment for appeal purposes/ to assist him to process the well informed grounds of appeal. The same reads;

"Naomba kupatiwa nakala ya hukumu ili inisaidie katika shughuli zangu mbalimbali".

In that respect, I agree with the District Court that the appellant has not demonstrated sufficient cause for grant extension of time to appeal out of time, therefore, this appeal is devoid of merit.

Before I pen off, I think it is high time to remind the lower Courts especially Primary court of their duty to supply parties with copies of judgment, ruling or record of proceedings in time. By having the same, any aggrieved party can draw the well informed grounds of appeal or seek any legal remedy on either point of law or fact according to law. Given the current position where the law allows Private Advocates to appear in Primary Courts, it is not possible for an Advocate to prepare a concise grounds of Appeal without having a copy of judgment in hand. Furthermore magistrates are reminded to abide to the Chief Justice directives directing them to issue copies of judgments and rulings within 21 days from the dates they are delivered. (See **Mwongozo wa Jaji Mkuu wa Tanzania wa watumiaji wa huduma za mahakama wa tarehe 24, Agost, 2020 page 61**).

All said and done, this appeal is hereby dismissed entirely for want of merit. Given the nature of the appeal, each party shall bear its own costs. It is so ordered

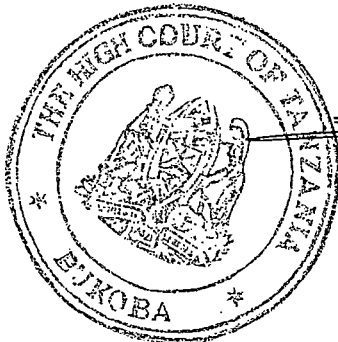


E. L. NGIGWANA

JUDGE

05/08/2022

Judgment delivered this 5th day of August, 2022 in the presence of both parties in person, Hon. E. M. Kamaleki, Judges' Law assistant and Ms. Tumaini Hamidu, B/C.



E. L. NGIGWANA

JUDGE

05/08/2022