

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

MISC. LAND APPLICATION NO. 67 OF 2020

JULIUS THOBIKO..... APPELLANT

AND

REGINA LOITORE.....RESPONDENT

RULING

18/2/2022 & 26/8/2022

ROBERT, J:-

In this matter, the court is called upon to make a ruling on a point of preliminary objection raised by the respondent through her advocate, Ms. Suzan Michael, to the effect that the petition of appeal filed by the appellant is incompetent before this court for being time barred. The point of preliminary objection is opposed by the appellant through his advocate, Ms. Veneranda Joseph.

It is gathered from the records and has not been disputed by either party that the decision sought to be challenged by way of appeal was pronounced by the District Court of Arusha on 12th day of August, 2020. The appeal was presented for filing on 14th of September, 2020.

The law under which this appeal has been preferred is section 25(1)(b) of the Magistrates Courts Act [Cap 11 RE 2019] which puts the time frame within which appeals are to be lodged from a District Court acting in its appellate or revisional jurisdiction to the High Court. It states that:-

*"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 supplied]*

Since the records show that the impugned decision was pronounced on 12th of August, 2020 and the law requires appeals to be filed within 30 days, it is obvious that the appellant was supposed to file his appeal not later than the 11th day of September, 2020. As rightly argued by the respondent, the appeal having been filed on 14th day of September, 2020 was thus filed out of the time prescribed by law.

The appellant, on the other hand, has urged this court to dismiss the preliminary objection contending that he received a copy of the impugned decision on the 20th of August, 2020 and so the period of limitation should start to count from that date. He strengthened his argument by citing

section 19(2) of the Law of Limitation Act [Cap. 89 RE 2019] which provides for exclusion of the time necessary for obtaining a copy of the impugned decision or order.

This Court considers that, this appeal having been preferred under section 25(1)(b) of the Magistrates Courts' Act which is the governing section for appeals to the High Court on matters originating from the Primary Court, the law is very clear that the appeal must be lodged within 30 days from the date of pronouncement of the impugned decision. There is no requirement for the appeal to be accompanied with the copy of judgment or decree since the law requires the appellant to file the petition of appeal in the District Court which upon receipt of the petition of appeal is required to dispatch the petition of appeal together with the record of the proceedings of the lower courts to the High Court (See section 25 (3) and (4) of the Magistrates Courts' Act).

The appellant having failed to lodge his appeal within the prescribed time was required to seek for extension of time and the reason that he failed to get copies in time ought to have been the reason for extension of time. The court of Appeal in **Bank of Tanzania vs Saida Marinda and 30 Others**, Civil Reference No. 03 of 2014 (unreported) when faced

and considered an application by a party who had not sought and obtained extension of time stated that;

"...because the applicant was late to do so for whatever reasons, she ought to have first applied for extension of time. It is proper that she should tell the court why she delayed in making the application"

On the foregoing, this Court finds and holds that this appeal having been preferred beyond the prescribed time without seeking to obtain extension of time, the appeal is incompetent for being filed out of the prescribed time and I proceed to dismiss it with costs.

It is so ordered.



K.N. ROBERT
JUDGE
26/8/2022