

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**PC PROBATE APPEAL NO. 11 OF 2021**

**(Arising from the Ruling of the District Court of Serengeti at  
Mugumu in Probate Appeal No. 2 of 2021)**

**BETWEEN**

**ELIZABETH MATINDE ..... APPELLANT**

**VERSUS**

**CHACHA MWITA MWITA ..... 1<sup>ST</sup> RESPONDENT**

**PAUL WANCHOKE MWITA ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**A.A. MBAGWA, J.**

This is an appeal against the ruling and order of the District Court of Serengeti at Mugumu in Probate Appeal No. 2 of 2021 where the court ruled out that the appeal was time barred.

Briefly, the appellant Elizabeth Matinde filed an objection before the Primary Court of Mugumu Urban challenging the appointment of the respondents, Chacha Mwita Mwita and Paul Wanchoke Mwita as the administrators of the estates of the late **Daniel Mwita Gesase** based on the invalid will. On 5<sup>th</sup> July, 2021 the Primary Court delivered the ruling in which it declared the will in dispute *void abnatio*. However, the court did

not revoke the appointment of the respondents. Instead, it ordered the respondents to proceed administering the deceased estates and distribute the properties in accordance with the deceased will which already it had declared invalid.

The decision of Mugumu Primary displeased the appellant hence she appealed to the District Court of Serengeti in Probate Appeal No. 2 of 2021 through a petition of appeal filed on 4<sup>th</sup> August, 2021. Before hearing of the appeal, the respondents raised a preliminary objection on a point of law that the appeal was time barred. The respondents lamented that the petition of appeal was filed out of prescribed period of thirty (30) days. The District Court (Hon. A.C. Mzalifu-RM) upheld the preliminary objection and went on to strike out the appeal with costs.

Again, the appellant was dissatisfied with the decision of the District Court in Probate Appeal No. 2 of 2021 hence she decided to lodge this appeal with two grounds namely;

1. That, the 1<sup>st</sup> appellate court grossly erred in law to hold that the Appeal No. 2 of 2021 is time barred.
2. That, the 1<sup>st</sup> appellate court decision of awarding costs to the respondents in the Appeal No. 2 of 2021 overrules many decisions of the Apex Courts of the land that bar costs in probate matters.

During of the hearing of the appeal the appellant was represented by Ms. Vicky Mbunde, on the one hand and, on the other hand, the respondents had the services of Mr. Msafiri Henge assisted by Masanja Ngofilo, learned advocates.

When taking the floor, Ms. Vicky prayed to abandon the second ground of appeal. Submitting on the first ground, she argued that the District Court Magistrate held that the appeal was time barred as per section 20 (3) of the Magistrate Courts Act, but the appeal was within the time as provided by the law. Ms. Vicky further argued that, the ruling of the Primary Court of Mugumu Urban was delivered on 5<sup>th</sup> July, 2021 and the appeal was lodged on 4<sup>th</sup> August, 2021. Referring section 19 (1) and (2) of the Law of Limitation Act which provides that the day on which the impugned decision was delivered is excluded in computing the period, Ms. Vicky was of the view that the appeal was filed within 30 days as the day the ruling was delivered i.e., 5<sup>th</sup> July, 2021 was not supposed to be included. The computation ought to start from 6<sup>th</sup> day of July, 2021, Ms Vicky argued.

On the basis of her submissions, the appellant's counsel prayed the Court to quash the ruling of the first appellate court and order the matter to be reheard before another magistrate.

Replying, the respondents' counsel submitted that the appeal was time barred for one day. The counsel argued that, as per the record, the ruling of Primary Court was delivered on 5<sup>th</sup> July, 2021 and the petition of appeal is dated 5<sup>th</sup> August, 2021. Thus, upon computation it becomes 31 days, the respondents' counsel submitted.

Relying on the case of **Christopher Leonard and Six Others vs Khebhanz Marketing Company Limited**, Misc. Land Application No. 10 of 2019, HC Mbeya (Mongella J), the respondents' counsel was of the view that since the time within which the appeal was supposed to be lodged has lapsed, the option is to apply for extension of time.

The respondents' counsel invited this Court to find the appeal meritless and consequently dismiss it.

In rejoinder, the appellant's counsel reiterated her submission in chief.

Having considered the submissions advanced by both parties, the duty of this Court lies to consider whether or not the Probate Appeal No. 2 of 2021 filed before the District Court of Serengeti was time barred.

In determining the issue at hand, I found the relevant question for consideration is when was the Probate Appeal No. 2 of 2021 filed before the District Court of Serengeti. There is no dispute that the ruling of Mugumu Primary Court in Probate Cause No. 25 of 2021 subject to Probate Appeal

No. 2 of 2021 was delivered in 5<sup>th</sup> July, 2021. However, regarding the issue as to when the Probate Appeal No. 2 of 2021 was filed before the District Court, each party argued its own date. The appellant argued that the appeal was filed on 4<sup>th</sup> August, 2021 whilst the respondent's counsel argued that the appeal was filed on 5<sup>th</sup> August, 2021.

I took time to go through the record of District Court of Serengeti and I found that in the ruling of the court in Probate Appeal No. 2 of 2021, the court mentioned at page 2 in first paragraph that the appeal was filed on 4<sup>th</sup> August, 2021. Though the petition of appeal dated 5<sup>th</sup> August, 2021 as the date for filing in registry of Serengeti District Court, the payment receipt indicates that the payment was effected on 4<sup>th</sup> August, 2021. That means the appeal was file on 4<sup>th</sup> August, 2021.

It is a trite law that document is deemed to be filed in court when payment is done and the proof thereof is payment of fees exhibited by the Exchequer Receipt. In **John Chuwa vs. Anthony Ciza** [1992] TLR ,233, the Court of Appeal, Ramadhani, CJ (as he then was) stated:

***" ...the date of filing the application is the date of the payment of the fees and not that of the receipt of the relevant documents in the registry."***

To cut a story short, I am in full agreement with the appellant counsel that the Probate Appeal No. 2 of 2021 was filed on 4<sup>th</sup> August, 2021. Thus, in terms of provisions of section 19 (1) and (2) of the Law of Limitation Act, it is certainly clear that the countdown started on 6<sup>th</sup> July, 2021. In this regard, by 4<sup>th</sup> August, 2021 when the appeal was filed in the District Court of Serengeti, it was the 30<sup>th</sup> day from when the impugned ruling was delivered by the Primary Court of Mugumu. As such, the appeal was filed within the time.

In view thereof, I find the appeal has merit and consequently I allow it. I further order that the Probate Appeal No. 2 of 2021 should proceed before another magistrate from where it had reached prior to raising the preliminary objection. Owing to the nature of the matter, each party should bear its own costs.

It is so ordered.

Right of appeal is explained.



*A.A Mbagwa*  
**A.A Mbagwa**

**JUDGE**

**06/10/2022**

**Court:** Judgment has been delivered in the presence Msafiri Henga and Masanja Ngofilo for the respondents and Veronica Daniel (the appellant's daughter) this 6<sup>th</sup> day of October, 2022.

  
**A.A. Mbagwa**

**JUDGE**

**06/10/2022**