

IN THE HIGH COURT OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

PC CIVIL APPEAL NO. 17 OF 2020

(Arising from Civil Appeal No. 15 of 2019 before the District Court of Urambo at Urambo, Original Civil Case No. 42 of 2019, in Kaliua Primary Court)

SHIDA DEO..... APPELLANT

VERSUS

PASKAL S/O LUKUBANIJA.....1ST RESPONDENT

MAYALA S/O NGOLE.....2ND RESPONDENT

JUDGEMENT

Date of Last Order: 4/11/2022

Date of Delivery: 13/12/2022

AMOUR S. KHAMIS, J:

Shida Deo instituted Civil Case No. 42 of 2019 against Paskal Likubanija and Mayala Ngole in the Urambo Urban Primary Court for the payment of Tshs 30,000,000/= as general damages following conviction of the respondents in two criminal cases for causing bodily injuries to him.

The trial Primary Court Magistrate entered judgement for Shida Deo and ordered respondents to pay Tshs 16,000,000/= as compensation for his bodily injuries.

On appeal by Paskal Lukubanja and Mayala Ngole, the District Court of Urambo held that:

“.....the trial Court arrived into its decision without considering before it the weight and credibility of the evidence adduced before it by both parties. This Court proceeds to allow this appeal partly quash and set aside the order of Primary Court and order the appellants to pay Tshs. 2,000,000/= to the respondent as damages/compensation for injuries and loss he sustained.”

Aggrieved with decision of the District Court, Shida Deo filed this appeal on three grounds, thus:

1. That, the District Court failed to re-evaluate properly the Appellant's evidence before the Primary Court justifying the claim for loss to the tune of TZS. 8,820,000/=.
2. That, the District Court failed to realize that, Tzs. 400,000/= awarded to the Appellant in criminal case was only for medication. In civil suit the Appellant was claiming specific damages for loss incurred during illness and general damages for trauma, pain and psychological torture.
3. That, the amount of Tzs. 2,000,000/= awarded by the District Court as compensation is peanut/extremely on the lower side.

Summons and a copy of petition of appeal were served on the respondent who filed a reply to the Petition of Appeal, which

contained a notice of preliminary objection on a point of law that this appeal is time barred.

Before me, the appellant, appeared in person. The respondent was represented by Mr. Kanisius Ndunguru, learned advocate. By consent the preliminary objection was argued by way of written submission and both sides complied to the schedule fixed by the Court.

Having examined the records before me, I noted that the impugned Judgement of the District Court of Urambo was delivered by Hon. Momba, RM on 2/04/2020. It was certified as true copy of the original on the same date.

However, the Petition of Appeal was presented in the District Court of Urambo on 6th day of May 2020, being beyond 30 days from date of delivery of the impugned decision.

According to Section 25 (1) (b) of the **MAGISTRATE COURT ACT CAP 11, R.E 2019** an appeal from the District Court to the High Court should be filed within thirty days from the date of decision or order.

Section 25 (1) (b) of the **MAGISTRATES COURTS ACT** further empowers the High Court to extend the time for filing an appeal either before or after expiration of such period of thirty days.

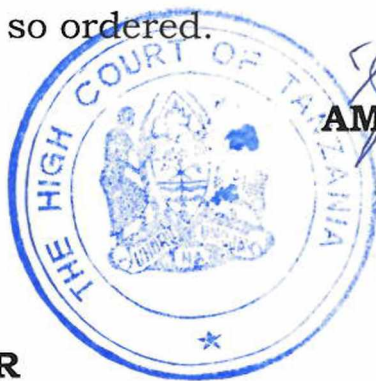
In the present case, the appeal was filed beyond 30 days from date of the impugned decision and no extension of time was sought from or granted by the High Court.

In MEDARD KAJUNA ANACRET V. EUSTACE RWEOGOSHORA CHRISTIAN & THREE (3) OTHERS, CIVIL APPEAL NO. 26 OF 2016, it was held that once a time prescribed by the law to appeal has lapsed, regardless of the reasons, an application for extension of time has to be sought.

For the aforestated reasons, this appeal is dismissed in terms of Section 3(1) of the **LAW OF LIMITATION ACT, CAP 89, R.E 2019**.

I make no order for costs.

It is so ordered.



AMOUR S. KHAMIS

JUDGE

13/12/2022

ORDER

Judgement delivered in Chambers in presence of the appellant in person and absence of the respondent.

Right of Appeal is explained.



AMOUR S. KHAMIS

JUDGE

13/12/2022