

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

AT ARUSHA

PC. CIVIL APPEAL NO. 15 OF 2021

*(of 2020, originating from Probate and Administration Cause No. 177 of 2013 of Arusha
Urban Primary Court)*

ISSA OKASH.....APPELLANT

VERSUS

SELEIMAN ABDALLAH KIKINGORESPONDENT

RULING

28/10/2021 & 21/01/2022

GWAE, J

The appellant was a losing party in objection proceedings. both Arusha Urban Primary Court and District Court of Arusha at Arusha whose decisions were delivered on 18th March 2018 and 27th November 2020. Both courts below found the appellant unfit person to administer the estate of the deceased person one Mwajabu Mbwana Kibwana.

Feeling aggrieved by the concurrent decisions of the courts below, the appellant filed the so called "Memorandum of Appeal" to the court comprised of five (5) grounds of appeal. However, the competence of this appeal was

seriously challenged by the respondent's advocate (Mr. Dismas Lume) who canvassed a preliminary objection on limitation of time.

At the hearing of the respondent's preliminary objection, the appellant and respondent were represented by Mr. Deogratius Mgalama and Mr. Dismas Philipo Lume respectively. Both parties' representatives being the learned advocates.

Supporting his PO, Mr. Lume argued that this appeal is time barred due to reason that, since the same was filed on 26th January 2021 while the District Court exercising its appellate jurisdiction rendered its decision on the 27th November 2020. According to him, section 25 (1) (b) of Magistrate Courts Act, Cap 11 Revised Edition, 2019 (MCA) this appeal ought to have been filed within thirty (30) days from the date of delivery of decision appealed.

He went on to state that this appeal was filed after lapse of 56 days. Thus, in breach of mandatory requirement of the law. He embraced his arguments by the decision in **Gregory vs Pastory** (2005) TLR 99 and **Martado village Council vs. Gabriel and another**, Civil Appeal No. 13/2010 (unreported) where it was held that attachment of decree and

judgment is not the requirement of the law. He finally prayed this appeal be dismissed since it was filed out of the statutory period and no leave was sought and obtained.

Admittedly, the counsel for the appellant submitted that though the appeal was filed out of time yet this court may extend time as per section 25 (1) (b) of MCA since his client was not availed copies of judgment and proceedings to date. He thus argued that he filed this appeal blindly. He then cited the decision of the Court of Appeal in the case of **Kisoki Emmanuel vs. Zacharia Emmanuel**, Civil Appeal No. 140 of 2016 (unreported) where it was held that attachment of the copy of decree is a matter of Logic and not legal.

In his brief rejoinder, the respondent's counsel stated that where an appeal has been filed out of the prescribed period the court cannot be justified to grant extension of time while the appeal had already been filed. He further stated that the applicant's contention that the appellant had not obtained a copy of judgment is not a legal requirement as stressed in Gregory's case. Blindly filing does not amount to court's permission to file an appeal out of statutory period where a period within which an appeal can be filed is explicitly provided by the law.

Since it is evidently clear that the appellant's Petition of Appeal was filed in the District Court on the 26th January 2021 whereas the District Court plainly rendered its verdict on the 27th November 2020, it follows that, this appeal was patently filed out of 30 days as required by the law and as rightly acknowledged by the parties' advocates.

Going through provisions of section 25 of the Magistrate Court Act, Cap 11 Revised Edition, 2002 there is no provision whatsoever that requires an intending appellant to accompany his or her Petition of Appeal, for matters originating from primary courts, with copies of decree or order and or judgment as opposed to appeals originating from District Courts or Resident Magistrates' Courts. This position has been consistently stressed in numerous courts' decision for example in **Abdallah Mkumba vs. Mohammed Lilame** (2001) TLR 326, held:

"There is no legal requirement that a petition of appeal must be accompanied by a copy of decree in appeals originating from primary courts.....nowhere in the magistrate courts act 1984 under which appeals originating from decisions of the primary courts is the word decree is mentioned or any other document to be accompanied to the petition of appeal".

See also a judicial decision in **Gregory vs Pastory** (2005) TLR 99 and **Martado village Council vs. Gabriel and another** (supra) cited by the respondent's counsel.

It follows therefore this appeal which was filed on 26th January 2021 was plainly filed after expiry of thirty (30) (it was filed 30 days later after lapse of thirty statutory days). The appellant ought to remedy the situation by filing an application for extension of time within which to file an appeal under section 25 (1) of the Act. The appellant's assertion that he applied for being supplied with a copy of judgment but to date he had not been availed with the same is therefore not merited since there is no such requirement unlike to appeals originating from District Court or Resident Magistrate's Court or District Land and Housing Tribunals (See Provisions of Order xxxix of the CPC). More so, provisions of section 19 (2) of the Law of Limitation, Cap 89 R. E, 2019 which provides for exclusional clause for the period within which an application for copies is made and time when a party is availed with the same. The law applicable for the matter originating from Primary Court Civil Procedure (Appeals in proceedings originating in Primary Courts) Rules, 1963 R.E, 2002 which does not require a petition of Appeal to be accompanied with copies of decree or order and judgment (See a decision


of this court in **Maretadu Juu Village Council v. Gabriel Gurti and another**, Civil Appeal No. 13 of 2010 (unreported) whose decision was delivered on the 1st November 2012).

Similarly, the contention by the appellant's counsel that he blindly filed this appeal on the ground that he was not availed with certified copies of decree or judgment and proceedings of the District Court is unfounded since as an advocate is entitled to peruse the record, upon application to the District Court, so that he could be able to properly file the requisite Petition of Appeal.

In the final event, the appellant's appeal is hopelessly time barred, I therefore sustain the respondent's PO. The appeal is therefore dismissed. Given the nature of the dispute to wit; administration of estate, I thus refrain from making an order as to costs.

It is so ordered.




M. R. GWAE
JUDGE
21/01/2022