

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

AT BUKOBA

MISC. CIVIL APPLICATION NO. 14 OF 2019

*(Misc. Application No. 21 of 21 of 2018 of the Bukoba District Court and Originating from Civil Case No. 129 of 2014
in the Katoro Primary Court)*

AMRAT AHMADA.....APPLICANT

VERSUS

AMRI ATHUMAN.....RESPONDENT

RULING

Date of Last Order: 24/04/2022

Date of Ruling: 08/04/2022

A.E. Mwipopo, J.

Amrat Ahmada, the appellant herein, filed objection proceedings in Criminal Case No. 129 of 2014 in Katoro Primary Court against the respondent namely Amri Athuman objecting the execution where the house and land in dispute had to be sold to satisfy the execution order of the trial Primary Court. The said execution originated from the Criminal Case No. 129 of 2014 in Katoro Primary Court where the respondent herein charged Muhidin Ayub who is the husband of the respondent for stealing money belonging to their Association (SACCOS). The said Muhidin Ayub was convicted by the trial Primary Court, and was discharged on condition not to commit any offence for the period of six months. The trial Primary

Court also ordered him to pay compensation of the amount stolen. The respondent attached Muhidin Ayub house and the land in order to execute the order of the trial Court and the appellant objected the said execution of the attached house and land. The trial Primary Court allowed the application to the extent of detaching the house from execution as it was matrimonial property and ordered only a part of the land of the value equal to the amount the appellant was indebted to be sold to pay the compensation. The appellant was aggrieved and filed Misc. Application No. 21 of 2018 for extension of time to appeal out of time against the decision of the trial Primary Court. The application was dismissed for wants of merits. The appellant was not satisfied one again and filed the present appeal.

The petition of appeal filed by the appellant contains 4 grounds of appeal as follows hereunder:-

- 1. That the learned Magistrate of the Bukoba District Court erred in law and fact for failure to grant leave to appeal basing on erroneous ground that the application filed by the appellant has been filed out of time without taking into consideration that under the provision of section 20 (4) (a) of the Magistrate's Court Act, Cap. 11, R.E. 2002, no time frame has been prescribed in filing an application of that nature.*
- 2. That the learned Magistrate of Bukoba District Court misdirected himself for failure to hold that the appellant established sufficient reasons that prevented her to lodge her appeal within prescribe period of 30 days.*
- 3. That the learned Magistrate of the 1st appellate Court after finding that the said application for extension of time within which to appeal out of time was*

incompetent for failure to comply with the provision of rule 3 of G.N. No. 312 of 1964 of the Civil Procedure (Appeal Originating in Primary Court) Rules, 1963, for failure to be accompanied with the intended appeal, went wrong in law and in fact for dismissing the same with cost instead of striking it out.

4. *That the learned Magistrate Hon. S.L. Maweda, RM, misdirected himself to dismiss the application with costs by relying on the case laws quoted in the ruling without taking into consideration that the said case laws are irrelevant and distinguishable to the circumstances surrounding the current case, and also without taking note that the proper course that ought to have been taken under circumstances would have to allow the appellant to amend her application.*

When the appeal came for hearing, the appellant was represented by Mr. Josephat Bitakwate, Advocate, whereas, the respondent appeared in person.

The Counsel for the appellant submitted on 1st ground only and abandoned the 2nd, 3rd and 4th grounds of appeal. He said that the appellant filed objection proceeding before Katoro Primary Court in execution case where the Primary Court heard both parties and decided in favor of the respondent. The appellant was aggrieved and filed appeal in the District Court which was struck out for being filed out of time. He decided to file application for extension of time which was struck out for the reason that the application for extension of time was filed out of time. The said application for extension of time was made under section 20 (4) (a) of the Magistrates Court Act, Cap. 11 R.E 2002. The District Court in its ruling held

at page 8 that the application for extension of time and the intended appeal was filed out of time.

It was submission for the counsel for the appellant that the District Court misdirected itself as there is no time limitation in the application for extension of time. What the court was supposed to do is to look at the grounds for extension of time advanced by the appellant and after evaluating the said ground the District Court will decide to grant or dismiss the application. The court went on to state that the appellant did not provide sufficient reason for the District Court to extend time. This means that the District Court went on to determine the matter on merits without affording the appellant to present his case as at this stage the court was determining Preliminary point of objection. The District Court infringed the appellant's right to be heard before the court decided on the matter. In the case of **Mbeya Rukwa Autoparts and Transport Ltd v. Jestina George Mwakyoma [2003] TLR 251** in page 265 the court held that the decision reached without affording the party's right to be heard is null and void. The District Court did not afford the appellants right to be heard on the reason for the delay to file the appeal within time. Thus, the Court erred to hold that appellant has not provided sufficient reason for the court to extend time and dismissed the application.

In his reply, the respondent said that the District Court rightly did strike out the application for extension of time since the appellant filed the said application after one year from the date her appeal was struck out by the District Court for being time barred. The argument by the counsel for the appellant that the application for extension of time has no time limit has no bases.

On the issue that the District Court determined the application that the appellant failed to show sufficient cause for extension of time while the court was determining the Preliminary Objection on point of law, the court was right to decide so because the appellant did not state the reason for filing the said application out of time. The objection was not the delay to file the said application but the appellant said nothing about the delay. For that reason the court was right to strike out the application.

It is not disputed that the District Court dismissed the application for extension of time filed by the appellant following the preliminary objection raised by the respondent. The District Court dismissed the said application after determining the first point of the objection that the application has been filed out of 30 days provided under section 20 (4) (b) of the Magistrates Courts Act, Cap. 11, R.E. 2002. The only dispute is whether the said decision by the District Court was proper.

As it was stated by the counsel for the appellant, the appellant filed Misc. Civil Application No. 21 of 2018 in Bukoba District Court for extension of time to lodge appeal out of time. The said application was made under section 20 (4) (a) of the Magistrates' Courts Act, Cap. 11, R.E. 2002. The said section reads as follows:-

"20 (4) Notwithstanding the provisions of subsection (3) –

(a) the district court may extend the time for filing an appeal either before or after such period has expired;"

The above cited provision provides for the powers of the District Court to extend time for filing appeal either before or after period of time limitation which is 30 days from the date of decision or order which the appeal is brought. The District Court in its decision as it is found in page 8 of the ruling was satisfied that the application and the intended appeal are both caught by limitation. In its conclusion, the District Court held that the appellant failed to show sufficient cause as to why he should be granted extension of time to appeal out of time. This conclusion by the District Court indicates that the District Court confused what issue for determination was before it.

The ruling delivered by the District Court was in respect of the preliminary objection raised by the respondent that the said application was filed out of 30

days provided by the law in section 20 (4) (b) of Cap. 11, R.E. 2002. The said section 20 (4) (b) of Cap. 11 provides as follows:-

"20 (4) (b) if an application is made to the district court within the said period of thirty days or any extension thereof granted by the district court, the district court may permit an appellant to state the grounds for his appeal orally and shall record them and hear the appeal accordingly."

It appears interpretation of the above cited section in the submission by the Counsel for the respondent before the District Court and the ruling of the District Court was that there is time limitation of 30 days from the date of decision or order of Primary Court for a party interested to appeal to the District Court against such decision or order. This is not a proper interpretation of the said section. The reason is that the section provides as to when the District Court may hear the grounds for appeal from the appellant. The same could be done after the appellant has made his application within 30 days or any extension granted by the Court. It does not provide any limitation whatsoever for filing application for extension of time. Thus, it was wrong for the District Court to hold that application for extension of time under section 20 (4) (a) of Cap. 11 has time limitation.

Further, the Counsel for the appellant rightly submitted that the District Court erred to hold that the appellant failed to provide sufficient cause as to why his application for extension of time should be granted. As I stated earlier herein, the ruling delivered by the District Court was in respect of the preliminary objection

raised by the respondent. Both parties made their submissions in respect of the said points of preliminary objection. This means that no party made submission in respect of the appellant's reason for the delay to file appeal within time. It is a trite law that decision reached without affording the party right to be heard is null and void as it infringed principles of natural justice. See. **M/S Darsh Industries Ltd v. M/S Mount Meru Milleers Ltd**, Civil Appeal No. 144 of 2015, Court of Appeal of Tanzania at Arusha, (unreported); and **Hussein Khan Bhai v. Kodi Ralph Siara**, Civil Revision No. 25 of 2014, Court of Appeal of Tanzania at Arusha, (Unreported). In the case of **Mbeya Rukwa Autoparts and Transport Ltd v. Jestina George Mwakyoma**, (supra), it was held that ;-

"In this country, natural justice is not merely a principal of common law; it has become a fundamental constitutional right Article 13 (b) (a) includes the right to be heard amongst the attributes of equality before the law, and declares in part;

(a) Wakati haki na wajibu wa mtu yeyote vinahitaji kufanyiwa uamizi na Mahakama au chombo kinginecho kinacho husika, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kwa ukamilifu."

The same was emphasized by the Court of Appeal in **Abbas Sherally and Another v. Abdul Fazalboy**, Civil Application No. 33 of 2002, the Court of Appeal of Tanzania at (Unreported), that:

"The right of a party to be heard before adverse action or decision is taken against such party has been stated and emphasised by the courts in

numerous decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified, even if the same decision would have been reached had the party been heard, because the violation is considered to be a breach of natural justice. "

From above cited decisions, the parties to any suit must be afforded right to be heard before the decision is reached. Failure to do so makes all the proceedings null and voids.

In the case at hand, the District Court determined the matter on merits while it was disposing the preliminary objection. The same was done without affording parties right to present their case in respect of the application. For that reason parties were not afforded right of hearing on the application for extension of time. This vitiates the whole proceedings and the Court hereby nullifies it. I order for the file to be reverted back to Bukoba District Court where the application has to start afresh before another Magistrate. Each party to take care of his own cost. It is so ordered.



A. E. Mwipopo

Judge

08/04/2022

The ruling was delivered today, this 08.04.02022 in chamber under the seal of this court in the presence of the appellant, respondent and the counsel for the appellant. Right of appeal explained.



A handwritten signature in black ink, appearing to be "A. E. Mwipopo", written over a horizontal line.

A. E. Mwipopo

Judge

08/04/2022