

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 219 OF 2020

(Originating from Misc. Civil Appl No. 300 Of 2019 In Ilala District Court)

HUSNA RAMADHANIAPPELLANT

VERSUS

AJUJU RAJABU.....RESPONDENT

RULING

MRUMA, J.

This is an appeal against the Ruling of Ilala District Court at Kinyerezi in Miscellaneous Civil Application No. 300 of 2019. In that application the Applicant Husina Ramadhani had applied for extension of time within she could file an appeal to challenge the decision and orders of Kariakoo Primary Court (ie the trial court) in Probate Cause No.2 of 2006. The impugned decision of the trial court was handed down on 25th ok October, 2019, and the application for extension was presented for filing on 5th December, 2019 a period of 41 days.

Appeals from Primary Court to the District Court are governed by section 20(3) of the Magistrates courts Act which provides that;

“Every appeal to the District Court shall be by way of petition and shall be in the District Court within thirty days after the date of the decision or order against which the appeal is brought.”

Under the provisions of sub – section (4) (a) of the same section the District Court may extend the time for filing an appeal either before or after such period has expired. In the District Court the Applicant (ie Appellant herein) gave reasons for delay as being caused by the trial court which delayed to avail her with copies of the proceedings and the impugned decision. The District Court dismissed here reason on the ground that on the evidence on record she was supplied with copies of proceedings and judgment on.11.11.2019 which was 14 days before the expiry of the period prescribed for appeal but she didn't appeal and could not give any account of those days.

Submitting in support of the appeal counsel Omari Abubakari Mohamed for the Appellant contended that although the Applicant was supplied with copies of judgment 13 days before the expiry of time prescribed the appeal but being a layperson, difficult in securing legal assistance, financial constraint's time spent in filing the appeal consumed the entire period of appeal prescribed by section 20(3) of the MCA.

As correctly held by the District Court it is trite that for the Applicant to secure an extension of time sufficient or good cause must be shown.

In the present case the reasons advance by the Applicant which were dismissed by the court have been repeated in this appeal. The reasons can be simply summoned as:-

- i. Ignorance
- ii. Poverty.
- iii. Procedure hurdles in filing the appeal and
- iv. Difficult in getting legal assistance.

It has been submitted that there was a delay in getting copies of judgment. On the evidence contained in the supporting affidavit and the submissions of the parties that contention cannot be time. Admittedly the Applicant was supplied with copies of proceedings and judgment on 11.11.2019, thirteen (13) days before expiry of prescribed time. Under the law (ie S. 20(3)) an application for extension can be filed before or after the expiration of the period prescribed. The Applicant did not utilize 13 days which he had to file his appeal nor did she use them to file an application for extension of time. Court cannot condone such inaction. Thus the District court was right to refuse to grant an extension of time because inaction on the part of the Applicant does not constitute sufficient or good cause,

The Appellant also raised the issue of illegalities. She complained that the District Court erred in law and fact for not considering that she has chance success if allowed to institute her appeal as there are some irregularities in the primary court judgment.

It is trite that whether a particular order or decision is wrong or not is not a ground on which the higher court can interfere with. Unless the subordinate court has exercised the jurisdiction on where it had none or exercised it illegally or with material irregularity.

Acting illegally or with material irregularity in the exercise of jurisdiction comes after the court has validly assumed jurisdiction.

After assuming such jurisdiction which is vested in it the court acts illegally or with material irregularity when there is exercise of jurisdiction which the court possess but the exercise has been in a manner which is illegal or materially irregular for instance by committing some error of

procedure in which the question jurisdiction is involved in the course of trial which is material in that it may have effected the ultimate decision. Thus, for a party to succeed in the application for extension of time on the ground of irregularity, it is not enough to plead or mention the word irregularity. A party alleging irregularity must go further and demonstrate to the court the irregularities he/she is alleging. In the present case the Appellant did not explain the illegality he alleged to have been committed.

In the final result, the appeal has no merits and it is accordingly dismissed with costs.



A handwritten signature in black ink, appearing to read "A. R. Mruma".

A. R. Mruma

Judge

2/3/2022

2/3/2022

Coram : Ho. A.R. Mruma,J.

For the Appellant : Mr. Omari Abubakari for Appellant

For the Respondent: Present in person

Cc : Delphine

Court: Ruling Delivered