

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)**

AT DAR ES SALAAM

CIVIL APPEAL NO. 98 OF 2022

(Arising from the decision n Civil Appeal No. 06 of 2022 Kinondoni District Court at Kinondoni (Hon. H.Msongo-SRM) dated 20th June 2022)

IBRAHIM CLEMENCE KANYIKA APPELLANT

VERSUS

MARIAM OMARY.....RESPONDENT

JUDGEMENT

07th February & 24th February, 2023

POMO, J;

This is an *exparte* judgement upon the failure of the respondent to enter appearance despite the service by the appellant. The ground upon which the appellant count on is mainly converging on the ruling delivered by the District Court of Kinondoni at Kinondoni (Hon. H. Msongo-SRM) in Civil Appeal No. 06 of 2022 in which, it was decided that such appeal was time barred.

Originally the matter was firstly instigated before the Kimara Primary Court in Civil case No. 217 of 2021 and the decision was delivered in favour of the respondent on 04th January 2022. aggrieved with the decision, the

appellant lodged his appeal on 18th day of February, 2022 before the first appellate Court, however the same was dismissed for being time barred upon upholding the preliminary objection raised by the respondent to that effect.

The appellant did neither yield nor back down thus, the instantaneously appeal was preferred in which the appellant herein is armed with one ground, namely; *that the trial magistrate (sic) erred in Law and fact for (sic) dismiss appellant appeal for been time barred while the appeal was in time.*

As alluded, the matter was ordered to proceed *ex parte* on 07th February, 2023 when the Court was satisfied that service was effected to the respondent but opted not turn on. At the hearing, the appellant appeared in person and upon being given an opportunity to submit on his ground of appeal he accentuated that, the Civil Appeal No. 06 of 2022 before the District Court of Kinondoni was not time barred. He articulated that, the reason as to why the same was not filed within the prescribed time, it is because the trial Court judgment was not signed timely. According to the appellant, there was no any reason advanced by the Primary Court for failure to sign it's decision timely.

The appellant contended that, the decision by the trial Court was pronounced on 27th December, 2021 but the judgement was signed on 08th February, 2022 and he had to file his appeal to the first appellate Court on 21st February, 2022. Basing on this, the appellant stressed that his appeal was filed timely.

From the content of the memorandum of appeal and the appellant's submissions, the broad question is whether the District Court of Kinonodoni (first appellate Court) was in fault when it held that, Civil Appeal No. 06 of 2022 be time barred.

It is beyond certainty that, the relevant law governing appeals originating from Primary Court to the District Court is section 20 (3) of the Magistrate Courts Act, [Cap 11 R.E: 2019]. The respective provision directs an aggrieved party whenever prefers to appeal, to lodge his or her petition within 30 days from the date of the decision and the provision does not require attachment of the impugned decision. For *ex tensio*, it reads: -

"20;-(1) N/A

(2)N/A

(3) *Every appeal to a district court shall be **by way of petition** and shall be filed in the district court **within thirty days after the date of the decision or order against which the appeal is brought.***"

Besides, the **Civil Procedure (Appeals in Proceedings Originating in Primary Courts) G.N. No. 312 of 1964** which provides for procedures in appeals originating from Primary Courts portrays nothing on requiring attachment of judgment of the Primary Court when one appeals either to the District Court or to the High Court for the matter originated from Primary Court. See the cases of **Abdallah Mkumba vs. Mohamed Lilame** [2001] T.L.R 326 and **Gregory Raphael vs. Pastory Rwehambura** [2005] T.L.R 99.

In both mentioned cases above, it was held that attachment of copies of decree and judgements is a condition precedent in instituting appeals originating from District Courts and Courts of Resident Magistrates, but for appeals in matters originating from Primary Courts there is no such requirement and the filing process is complete when the petition of appeal is filed upon payment of the requisite court fees.

As depicted and undisputedly, the decision of the trial Court was delivered on 04th January 2022 and the appeal thereafter before the District Court of Kinondoni was lodged on 18th February 2022 which is 45 days after delivery of the decision. From the record it appears the appellant had paid the fees on 21st February, 2022 but his appeal was lodged on 18th February, 2022. It is generally agreed that even filing electronically through the system

would be considered to have been done upon submission or uploading in the system however this assumption is not absolute, and the position set down through numerous decisions of this Court is that, where fees are payable, then completion of the filing is done upon payment of the requisite filing fees.

See: **John Chuwa v. Anthony Ciza** [1992] T.L.R 233; **Camel Oil (T) Ltd v. Bahati Moshi Masabile & Bilo Star Debt Collector**, HC-Civil Appeal No. 46 of 2020; **Misungwi Shilumba v. Kanda Njile**, HC- (PC) Civil Appeal No. 13 of 2019; and **Adamson Mkondya & Another v. Angelina Kukutona Wanga**, HC-Misc. Land Application No. 521 of 2018 (all unreported).

Guided by the above, counting the dates from the date of the decision to the date of payment as appearing on the payment receipt which is 21st February, 2022 makes it 48 days. Nevertheless, there was no extension of time sought and granted to the appellant by the District Court of Kinondoni for him to file his appeal beyond the prescribed time. The only reason given vide his submission is that, the trial Court Judgement was signed lately and that was the reason why he did not file his appeal within the prescribed time.

It should be noted that, **one**, even if we assume that was the status, still it was very misfortune for the appellant to wait for the signature of the decision of which was not a condition precedent in instituting his appeal. And **two**, even if we assume that, his delay was justifiable still he had no automatic right to file his appeal out of time without first procuring an order of extension of time under section 20 (4) of the Magistrates Courts Act (supra). Therefore, I do not subscribe to the appellant's prepositions in their entirety.

Basing on what I have expounded above, I find this appeal to be devoid of merit . I uphold the first appellate court findings that the appellant's appeal before it was time barred. Thus, I hereby dismiss this appeal with no order as to costs.

Order accordingly.

Rights of Appeal to the parties have been duly explained.

DATED at **DAR ES SALAAM** this 24th day of February, 2023.



MUSA K. POMO

JUDGE

24.02.2023

