

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
PC CIVIL APPEAL NO. 3 OF 2023

(Arising from Bagamoyo District Court decision in Civil Appeal No06 of 2022 dated on 12th Sept 2020 originating from the Decision of Msoga primary court in civil case no 12 of 2020)

YENGELE MAITEI KUTEMO..... APPELLANT

PAIYANA MAITEI KUTEMO..... APPELLANT

VERSUS

HALFANI ATHUMANI MUHODERESPONDENT

RULING

29th March & 28th April 2023

MKWIZU, J

This is an appeal by the appellants against the dismissal order in Civil Appeal No. 6 of 2022 by the Bagamoyo District Court. Opposing the appeal, the respondent filed a reply to the memorandum of appeal filed together with a notice of preliminary objection attacking the appeal for being time-barred.

Hearing of the preliminary proceeding by way of written submissions. The appellant enjoyed the services of Ms. Kalunde Kalili learned to advocate while the respondent had the services of Mr. Fred Julius Sanga also a learned advocate.

Mr. Sanga's argument in support of the objections is to the effect that appeals to this court originating from the primary courts are to be filed within 30 days from the date of the decision. He said the appellant's

petition of appeal was physically filed at the District Court of Bagamoyo before it was electronically filed in court on 14th February 2023. He was of the proposal that the reconning of the days should begin from the date the petition was electronically filed as provided for under rule 9 of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 GN No 148 of 2018.

He, in elaboration, said the impugned decision was delivered on 12/9/2022 but the petition of appeal was lodged on 14th February 2023 after the lapse of 150 days and without an extension of time to appeal. And that the physical filing according to the stamp appearing on the front page of the petition of appeal was made on 11/11/2022 almost 57 days from the date of the decision sought to be challenged contrary to the dictates of the law requiring the appeal of this nature to be filed within 30 days period from the date of the impugned decision. To bolster his argument he cited to the court the case of **Isack Kahwa V Bandora Salum**(PC) Civil Appeal No 6 of 2020.

Appellants' counsel seems to agree that the district court's decision was delivered on 12th September 2022, that the appeal lying therefrom was to be filed within 30 days from the date of the decision, and that the electronic filing is the legally recognized means of introducing cases in court. She however opposed the arguments that the appeal was preferred outside the time prescribed by the law. According to her submissions, the petition of appeal was instituted electronically before the District Court on 12th October 2022 in accordance with section 25(3) of the MCA, Cap 11 R:E 2019.

She contended that the confusion came after the deputy registrar's refusal to admit the copy of the petition in the High court registry with the instruction to have the petition refiled in the high court due to prevailing technical problems of transmission of the electronically filed petitions from the trial courts to the High Court. The appellant's counsel said it is after the refileing of the petition at the high court on 25th October 2022 that they were allowed to file a hard copy petition with the District Court on 11th November 2022 for fostering the transmission of the records to this court.

I have consciously considered the party's submissions. It is evident that this appeal emanates from the decision of the District Court exercising its appellate jurisdiction. As rightly submitted by the parties, the provisions of section 25 of the MCA and Rule 21 of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 GN. No. 148 of 2018, (the Electronic Filing Rules) 2018 are elaborative on how a valid appeal is filed in court in terms of time limitation, procedure, venue, and the manner in which the appeal is to be filed. Section 25 provides:

(1) Save as hereinafter provided-

(a) N/A

(b) in any other proceedings any party, if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal therefrom to the High Court; and the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired.

(2) N/A

(3) Every appeal to the High Court shall be by way of petition and shall be filed in the district court from the decision or order in respect of which the appeal is brought: Provided that, the Director of Public Prosecutions may file an appeal in the High Court and, where he so files an appeal, he shall give notice thereof to the district court and the district court shall forthwith dispatch the record of proceedings in the primary court and the district court to the High Court.

(4) Upon receipt of a petition under this section the district court shall forthwith dispatch the petition, together with the record of the proceedings in the primary court and the district court, to the High Court.

And Rule 21 (1) of the Electronic Filing Rules provides that: ***a document shall be considered to have been filed if it is submitted through an electronic filing system.***

It is clear from the above provisions that appeals to this court from the district court's decision originating from primary courts are to be filed **electronically in the District Court which handed down the decision** within **30 days from the date of the decision** and the District Court shall immediately **forward the same to the High Court** pursuant to section 25(4) of the same Act. See **Isack Kahwa V Bandora Salum(supra)**.

Parties are at one on the above position. They also agree that, with the coming into force of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 GN. No. 148 of 2018, (the Electronic Filing Rules) 2018

a document is considered to have been filed on the date it is submitted through an electronic filing system. The only issue registered is whether the appeal was filed within time or not.

I have examined the records. The court stamp at the top right corner of the petition before the court indicates that the same was physically presented at the District Court in court on 11 November 2022 with an exchequer receipt issued to the appellant on 14/2/2023. The Appellant's counsel's contention is that they timely on 12/10/2022 electronically submitted the petition of appeal to the district court as required by the law. But then, she presented a hard copy to the High Court which was refused admission with instruction of refiling the same electronically which she complied with on 25/10/2022.

It is worth noting that, the appellant's counsel's reasons for refiling the petition above would have been, in my view, a ground for the delay in filing the petition of appeal in a properly filed application for enlargement of time and not at this stage of the proceedings more so after the registration of the preliminary objection.

I have however considered an e-filing proof printout from the Judiciary case management system presented by the appellant counsel. I should say from the outset that the two documents are far from explaining the anomalies raised by the current preliminary objection. *One*, the two documents are electronically generated documents without an indication of how they were generated, the person who generated the same, and they are even not certified so as to connect them with any of the court's registry named by the appellant's counsel and the counsel's submissions

are silent on how she obtained the said printout generated from the Judiciary Case management system.

Two, the appellant's counsel agrees that the filing of the petition was to be filed electronically at the district court that handed down the decision pursuant to section 25 of the MCA, and if we are to agree with her assertion that she did file the same as alleged, the question would be, what then necessitated the lodging of the hard copy petition to the High Court Registry? This question comes in because the duty of transmission of the records to the High Court is under section 25 (4) of the MCA vested to the District Court to which the petition of appeal is filed and not the appellant.

The appellant's counsel has also failed to establish the alleged directives by the deputy registrar. Under Rules 20(1) (e) and (2) and 24 (4),(5), and (6) of the electronic filing rules any permissions by the deputy registrar or Magistrate in charge are given in writing. I would have expected the appellant counsel, under the explained situation to come with a document authorizing the alleged refiling of the petition. But again, contrary to the appellant counsel's demonstration that the document was finally filed at the High Court under the deputy Registrar's instructions, the hard copy petition of appeal in the records was lodged at the District Court.

There is an invitation by the appellant counsel that the court should resort to the overriding objectives principle to let the matter proceed on merit. I need not cite any authority that the overriding objective Principle cannot be applied blindly to rescue situations that are against the law.

The petition of appeal filed in court on 11/11/2022 against the decision of the district court dated 12/9/2022 is barred by limitation. The preliminary objection is for that reason sustained and the appeal is hereby dismissed for being time-barred. Order accordingly.

Dated at Dar es Salaam, this 28th April 2023



A handwritten signature in brown ink, appearing to read "E. Y Mkwizu", written over a horizontal line.

E. Y Mkwizu
Judge
28/4/2023