

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MWANZA SUB-REGISTRY)**

**AT MWANZA**

**MISC. CIVIL APPLICATION NO. 34 OF 2022**

*(Arising from the judgment and decree of Nyamagana District Court in Civil Appeal No. 164 of 2021. Original Civil Case No. 122 of 2021 from Mkuyuni Primary Court.)*

**BURUANI AMIRI.....APPLICANT**

**VERSUS**

**ABDUL HASHIM MZIRAY.....RESPONDENT**

**RULING**

**5<sup>th</sup> & 25<sup>th</sup> April, 2023**

**DYANSOBERA, J.:**

This is an application for enlargement of time in which to lodge an appeal out of time against the decision of Nyamagana District Court in Civil Appeal No. 64 of 2021. The application is by Chamber Summons supported by an affidavit duly affirmed by the applicant. The application has, however, been resisted through the affidavit in reply filed by the respondent.

For a better appreciation of the issues of contention, it is necessary to explore the factual setting giving rise to the application which may be, briefly, recapitulated as follows: -

The applicant was successfully sued by the respondent before the Primary Court of Nyamagana District at Mkuyuni. His appeal to the District Court was dismissed with costs hence this second appeal.

In prosecuting the application, the appellant was represented by Mr. Dioniz John Mwasi, learned Advocate while Mr. Joseph Kinango, learned Advocate, stood for the respondent. The application was heard by way of written submissions.

The reasons as to why the applicant failed to appeal in time as prescribed by law is, according to paragraphs 3 and 4 of the applicant's affidavit, failure by the District Court to issue a copy of the decree in time. It is averred that the applicant was supplied with the said copy on 2.5.2022 while the judgment was delivered on 28.3.2022. It is argued on part of the applicant that after the supply of the copy of the decree, the applicant started the process of securing legal services so as to submit his application for leave to appeal out of time.

It is further averred by the applicant under paragraph 5 of the affidavit that the Mkuyuni Primary Court lacked territorial jurisdiction to adjudicate on the matter in that he, the applicant, then defendant at the trial, was a resident of Mabatini and that the source of the claim is business conducted at Igombe which is within Ilemela District. To buttress his argument, learned Counsel for the applicant, in his submission, cited the cases of **Ahmed Ismail v. Juma Rajab**

(19850 TLR 204 and **Abdallah Ally Selemani t/a Tabata Petrol Station Co. Ltd**, Civil Appeal No. 89 of 2017.

Furthermore, this court was referred to section 14 of the Civil Procedure Code [Cap. 33 R.E.2019].

Rebutting the contents in the applicant's affidavit, the respondent, in his counter affidavit, averred from paragraphs 6 to 14 as follows. There was no evidence that the decree was issued late as there is no affidavit to confirm that assertion. No requirement of attaching a copy of a decree in respect of appeal from primary court to the district court. The impugned judgment was read over on 28.4.2022 and parties were supplied with copies of the decree on the same date. The dispute arose in Nyamagana District and not in Ilemela District. It is the respondent's contention that no-good reasons for extension of time have been assigned by the applicant.

In the written submission in reply, Counsel for the respondent insisted that nowhere in the proceedings and judgment is indicated that the business was conducted at Igombe and that the applicant resides at Mabatini. He was of the view that the question of jurisdiction needs evidence. According to learned Counsel, the applicant admits that he resides in Mabatini which is within the Nyamagana District in which Mkuyuni Primary Court is located.

With respect to the delay, Counsel for the respondent was emphatic that the decree was signed 28.3.2022 and certified on that date meaning that it was ready for collection. It is his argument that nothing in the applicant's affidavit shows that the applicant wrote a letter requesting the supply of the copy of the decree. Concluding his submission, Counsel argued that it is not a legal requirement for such appeals to be accompanied by copies of decrees and that the applicant ought to have been aware of this aspect as at the District Court he was represented by a lawyer one Ezekiel James of Delict Attorneys. According to Counsel for the respondent, sufficient reasons had to be adduced to warrant this court extend time. Reliance was placed on the case of **Mussa and another v. Wanjilu and another, (1970) EA 481** where it was held that: -

'Normally sufficient reasons must relate with the inability to take particular steps.

I have dispassionately considered and weighed the rival arguments from both parties. To start with, I think it is imperative to reiterate, as a matter of general principle, that whether to grant or refuse an application of extension of time is entirely in the discretion of this court. But, I am aware that discretion is judicial and must be

exercised judiciously and according to the rules of fair trial and administration of justice.

For this court to be able to exercise its discretionary powers in granting an extension time to the applicant who wishes to pursue the appeal out of the prescribed time, the Court has set *criteria* which have to be considered when dealing with the matter of such nature. For instance, the defunct Court of Appeal for Eastern Africa in the case of **Mbogo v. Shah** [1968] EA held that: -

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended.

Now, the issue for consideration and determination is whether the applicant has adduced sufficient reason for extension of time.

With regard to appeals to the High Court from district courts in their appellate jurisdiction, Section 25 of the Magistrates' Courts Act [Cap. 11 R.E.2019] is clear and provides as hereunder: -.

'25.

*(1) Save as hereinafter provided—*

*(a).....not applicable*

*(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).....not applicable.*

*(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'.*

According to the above provisions, there is no requirement of attaching a copy of the decree to the memorandum of appeal where the appeal originates from the district court in its appellate or revisional jurisdiction. The reason is obvious. Since the appeal is filed

to the district court from the decision or order in respect of which the appeal is brought and that upon receipt of a petition under the district court forthwith dispatches the petition, together with the record of the proceedings in the primary court and the district court, to the High Court, then the High Court is seized of both records of the lower court.

It is the argument by the applicant that there was a delay in supplying him with a copy of the decree. As rightly pointed out by Counsel for the respondent, apart from the fact that there is no evidence that the copy of the decree was supplied to him on 2<sup>nd</sup> May, 2020 as the copy of the said decree was certified on 28<sup>th</sup> day of March, 2022 hence ready for collection, there is no suggestion that the applicant wrote a letter requesting to be supplied with the copy of the decree. Furthermore, the attaching of that copy to the petition of appeal was not a legal requirement and this means that even if there was a delay in the supply of the copy of decree to the applicant, still that was not a sufficient for his delay in lodging the appeal.

The other reason as to why the time to appeal should be extended is that the Mkuyuni Primary Court had no jurisdiction to try the suit between the parties. The argument by the applicant was that the source of the dispute was the business which was being conducted at Igombe which is within Ilemela District and that the



defendant was a resident of Mabatini. It is the applicant's contention that the suit had to be instituted and heard in the court within the local jurisdiction where either the business dispute arose or where the defendant resided. The appellant supported his stance by citing the case of **Abdallah Ally Selemani t/a Ottawa Enterprises v. Tabata Petrol Station Co. Ltd**, Civil Appeal No. 89 of 2017.

Attractive as this argument may seem to be, it is devoid of any merit. As rightly submitted by the respondent, the applicant admits that he was a resident of Mabatini which is within the local limits of the jurisdiction of Mkuyuni Primary Court which is in Nyamagana District. There is no evidence that the business was conducted at Igombe area. Indeed, the law is clear on the territorial jurisdiction of the primary courts and this is provided for under section 3 of the Magistrates' Courts Act in the following terms: -

*'3. (1) There are hereby established in every district primary courts which shall, subject to the provisions of any law for the time being in force, exercise jurisdiction within the respective districts in which they are established.*

*(2) The designation of a primary court shall be the primary court of the district in which it is established.*

As the law clearly stands, Mkuyuni Primary Court which is in Nyamagana District had jurisdiction to hear and decide the



respondent's suit as the appellant admitted that he was residing in Mabatini which is within Nyamagana District in which Mkuyuni Primary court exercises its territorial jurisdiction. For these reasons, the case of **Abdallah Ally Selemani t/a Ottawa Enterprises v. Tabata Petrol Station Co. Ltd**(supra) was cited out of context and is inapplicable in the circumstances of this case.

To that end, I must conclude that the applicant has failed to demonstrate good or sufficient cause to warrant this court exercise its discretionary powers in his favour. The application, therefore, crumbles and is dismissed with costs to the respondent.

It is so ordered.



**W.P. Dyansobera**  
**Judge**  
**25.04.2023**

This ruling is delivered at Mwanza under my hand and the seal of this Court on this 25<sup>th</sup> day of April, 2023 in the presence of the applicant and respondents both who have appeared in person and unrepresented.



**W.P. Dyansobera**  
**Judge**