

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MWANZA

AT MWANZA

H.C CIVIL APPEAL NO. 24 OF 2022

*(Appeal from the Ruling of the District Court of Geita at Geita in Misc. Civil Application No. 38 of 2021
(Maweda, PRM) dated 8th of April, 2022.)*

WINIFRIDA CHARLES APPELLANT

VERSUS

ABEL MSAFIRI RESPONDENT

JUDGMENT

11th October 2022 & 25th April, 2023

ITEMBA, J

This appeal arises from the decision of the District Court of Geita, in respect of an application for extension of time to institute an appeal against the decision of Katoro Primary Court.

In the said District Court, the appellant's efforts fell through, when it was held that sufficient cause for prompting the court's discretion to grant extension of time had not been given. The court took the view that delays that arise from awaiting service of a copy of the trial court's decision does not constitute sufficient cause for extension of time. Feeling hard done, the appellant has preferred the instant appeal. The petition of appeal has five grounds, quoted in verbatim as follows:

- 1. That, the learned district court magistrate erred in law and fact for failing to take into consideration that the trial primary court did not afford the appellant her right to be heard and her right to receive a*

- copy of judgment within a prescribed time as promised by the trial magistrate for reference and preparation of her ground to appeal.*
- 2. That, the learned district court magistrate erred in law and fact by prepared the decision which bears the contradiction date, and the said decision is not clear if it is ruling or judgment.*
 - 3. That, the learned district court magistrate erred in law and fact in considering an application is not an appeal or suit and he delivered and signed it as judgment instead of ruling.*
 - 4. That, the learned district court magistrate erred in law and fact for failing to analyse critically and consider the submissions of the appellant before he reached the disputed ruling not judgment and delivered it in chamber instead of in open court as required by the law.*
 - 5. That, the learned district court magistrate erred in law and fact for failing to considering that the appellant had a good ground in her application of the extension of time to appeal.*

Before I delve into the heart of the matter, it apposite that the background be given, albeit in brief. In March 2018, the appellant bought 6,000 kilograms of rice from the respondent and paid only TZS 3,000,000/= out of TZS 9,000,000/= on the promise that the remained sum would be paid later. Things went awry on the appellant's business, and she could not pay back the respondent the remaining sum, hence, the respondent sued the appellant in **Civil Case No. 60 of 2021**. The Primary Court of Katoro before which the matter was instituted issued a decision in the respondent's

favour. In attempt to reverse the Primary Court decision, the appellant found herself out of time. She then filed **Civil Application No. 38 of 2021** for leave to appeal out of time against the Primary Court's decision. The District Court was not convinced that the applicant had adduced sufficient reasons for delay and dismissed the application. Undaunted, the appellant has preferred the instant appeal.

It was ordered that disposal of the appeal be carried out by way of written submissions following a move by the parties.

Submitting in support of the appeal, the appellant chose to drop three grounds in her petition that is to say grounds 2, 3 and 5 and opted to argue grounds 1 and 4. She submitted on the first ground that she was denied her fundamental right of being heard and she was furnished with the copy of judgment out of prescribed time for her to prepare the appeal. That, the District Court was incorrect to disregard that reason because it was a sufficient to grant an extension of time.

With respect to the second ground, the appellant's argument is that the reason for her delay was because she was not furnished with the copy of judgment on time so as to make reference and prepare the appeal. That, she was absent on the day which the judgment was delivered. She referred the court to the case of **Mbeya-Rukwa Auto Parts and Transport ltd Vs Jestina George Mwakyoma** [2003] TLR 251 where it was stated;

"In this country, natural justice is not merely a principal of common law, it has become a fundamental constitutional right, Article 13(6) (a) includes the right to be heard among the attributes of the equality before the law and declares it in part"

"(a) Wakati haki na wajibu wa mtu yeyote vinahitaji kufanyiwa maamuzi na mahakama au chombo chochote kingine kinachohusika, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa"

The appellant prayed for the court to go through the records so as to satisfy itself that the reasons which she adduced at the District Court were strong enough to enable the court to grant extension of time. Lastly, she prayed this appeal be allowed.

The respondent began by poking holes into the appellant's submission. He contended that the submissions made do not hold water because there is no evidence which indicate that the appellant applied to be supplied with a copy of judgment.

With respect to the application for extension of time, the respondent contended that such extension is granted as a matter of discretion, and it not mandatory to attach a copy of judgment to the petition of appeal originating from Primary Court. To buttress his contention, the appellant cited two decisions ***Gregory Raphael v Pastory Rwehabula*** [2005] TLR

99, and that of ***Sophia Mdee v Andrew Mdee & 3 Others***, Civil Appeal No. 5 of 2015, which observed that;

"From the foregoing it is clear that attachment of a copy of judgment along with the petition of appeal is not a legal requirement in instituting appeals originating from primary courts"

The respondent contended that, since the judgement before trial court was delivered on 18.8.2021 and the petition of appeal was filed on 27.10.2021 there was lapse of more than 60 days.

He further submitted that, there is no valid reason advanced for such a delay and that, the main aim of the appellant is to prolong the process and denying the respondent the right to get what he deserved. He therefore prayed for the appeal to be dismissed with costs.

In her short rejoinder, the appellant submitted that it was the trial court which is to be blamed. That, she should not be punished for the fault committed by the officer of the court as it was held in the case of **William Getari Kegege v Equity Bank & Another**, Civil Application no. 24/08 of 2019, CAT Mwanza (unreported). He insisted that he received the copy of judgment on 11.10.2021 which was already late. He pleaded the court to call for register book which record issuance of copies of judgment to satisfy itself. Nonetheless, he cited the case of **Mustafa Kimaro v Mariam**

Hamisi Maftaha, Misc. Land Application no. 581 of 2018. H.C Land Division at Dar es Salaam (Unreported) held as follow;

"Therefore, under section 19(2) of the Law of limitation act, the applicant was entitled exclusion of the period when he was waiting for copy of the decision"

From the parties' arguments, the singular question is whether the District Court erred in its decision to refuse to grant extension of time to appeal against the decision of the trial court. To be able to provide an answer to this question, this court need to be satisfied if the appellant's application contains any sufficient reason to allow such extension.

This question takes into consideration the fact that the law is settled in this country, that extension of time, which is an equitable discretion, is a remedy that is exercised judiciously. This means, therefore, that grant of extension is done upon the applicant satisfying the court by presenting a credible case upon which such discretion may be exercised (See: Supreme Court of Kenya's decision in **Nicholas Kiptoo Arap Korir Salat v. IEBC & 7 Others**, Sup. Ct. Application 16 of 2014).

Worth of a note, is the fact that this requirement stems from a reasoning of the East African Court of Appeal in **Mbogo v. Shah** [1968] EA,

in which factors for consideration in deciding whether to grant or refuse extension of time were laid down. It was held thus:

"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."

In the Court of Appeal of Tanzania in ***Ngao Godwin Losero v. Julius Mwarabu***, CAT-Civil Application No. 10 of 2015 (ARS- unreported) it was stated as follows:

"To begin with, I feel it is instructive to reiterate, as a matter of general principle that whether to grant or refuse an application like the one at hand is entirely in the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice."

The Kenyan Supreme Court widened the scope of application of factors constituting sufficient cause by laying down key principles that should guide a court that sits to consider an application for extension of time. This was in the case of ***Aviation & Allied Workers Union of Kenya v. Kenya Airways Ltd, Minister for Transport, Minister for Labour & Human Resource Development, Attorney General***, Application No. 50 of 2014, it was soundly held as follows:

"... We derive the following as the underlying principles that a court should consider in exercise of such discretion"

- 1. extension of time is not a right of a party; it is an equitable remedy that is only available to a deserving party at the discretion of the court;*
- 2. a party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court;*
- 3. whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;*
- 4. where there is [good] reason for the delay, the delay should be explained to the satisfaction of the Court;*
- 5. whether there will be any prejudice suffered by the respondents if extension is granted;*
- 6. whether the application has been brought without undue delay; and;*
- 7. whether in certain cases, like election petitions, the public interest should be a consideration for extension."*

See also: ***Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania***, CAT-Civil Application No. 2 of 2010 (unreported).

The contention by the applicant is that, the delay in initiating the appeal process was caused by the delay in obtaining a copy of the decision. The District Court considered this to be an insufficient ground for extension of time, and I cannot agree more with him. The trite legal position is that,

attaching of a copy of the judgment, decree or order sought to be appealed against, or even the proceedings, is not a prerequisite for filing an appeal from the Primary Court. For ease of reference, I will quote section 25 (3) and (4) of the Magistrate's Courts Act (MCA), Cap. 11 R.E. 2019 which states as follows:

"(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:"

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

This position has been underscored in ***Gregory Raphael v. Pastory Rwehabula***, [2005] TLR 99 (HC), it was held as follows:

*"But the position is different in instituting appeals in this Court on matters originating from Primary Courts. **Attachment of copies of decree or judgment along with petition of appeal is not a legal requirement. The filing process is complete when petition of appeal is instituted upon payment of requisite fees.** If attachment with copies of judgment, as said by Mr. Rweyemamu, is a condition sine qua non in filing PC civil appeal in this Court, I think the rules i.e. The Civil Procedure (Appeals in Proceedings originating in primary Courts) 1964, G.N. 312/1964 would have stated so and in very clear*


*words. **The rules do not impose that requirement.** So, it is not proper to impose a condition which has no legal backing.”[Emphasis supplied]*

In view of the foregoing position, it was not a legal requirement for the appellant to attach a copy of judgment as she was appealing from the Primary Court’s decision. It is quite certain that the appellant’s alleged ground that she was waiting for the copy of judgment before she files her appeal is not a sufficient reason to constitute the basis for the extension of time. In that respect, I see nothing faulty in the decision from which this appeal arises. I vindicate the learned magistrate’s reasoning and hold that he exercised his discretion appropriately when he refused to grant the application.

Consequently, I find the appeal lacking in merit. Accordingly, the same is dismissed with costs.

It is so ordered.

DATED **at MWANZA** this 25th day of April, 2023.


L. J. ITEMBA
JUDGE

