

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM SUB-REGISTRY)
AT DAR ES SALAAM**

MISC. CRIMINAL APPLICATION NO. 25 OF 2022

(Originating from Civil Application No. 30 of 2019)

PLATINUM CREDIT LTD APPLICANT

VERSUS

HAMDANI MFAUME GOHARESPONDENT

RULING

S.M. MAGHIMBI, J:

The applicant is out of time in lodging an appeal to this court against the decision of the District Court of Kinondoni in Civil Appeal No. 30/2019. She has lodged this application under the provisions of Section 251(b) of the Magistrate Courts Act, Cap 11 R.E 2019 ("the MCA") and Sections 76(1)&(2) and 95 of the Civil Procedure Code, Cap. 33 R.E 2019 ("the CPC"). He is moving the court for orders extending time within which she can file a petition of appeal and further orders for any other relief(s) that the court may deem fit and just to grant. The application was lodged by a Chamber Summons supported by an affidavit of Philip Kitomari, learned advocate representing the applicant, deponed on the 14th day of January 2022. On his part, the respondent opposed the application by filing a counter affidavit deponed by the respondent himself on the 03rd day of October, 2022.

By an order of this court dated 02nd November, 2022, the application was disposed by way of written submissions. I appreciate the submissions made by the parties which will be taken on board in due course of constructing of this ruling.

As per the affidavit in support of the chamber summons as well as the submissions in support of this application, the applicant's main reason for the delay is what he termed to be the delay to be supplied with the necessary documents required in lodging an appeal which according to him was the impugned judgment of the District Court. Mr. Kitomari submitted that the judgment was delivered on 25/08/2021 and that on 01/10/2021 they applied for a copy of judgment. Further that on 01/12/2021 the respondent lodged an oral execution application whereby he attached a copy of the judgment from District Court and that is when the applicant requested for a copy of the judgment and he was served at the time when the limitation period under Section 76(1)&(2) of the MCA had lapsed. He hence argued that the applicant has never slept on his rights praying that the application should be granted. He supported his submissions by citing numerous decisions of court and the Court of Appeal including the case of **Yusuph Same and Another Vs. Hadija Yusuph, Civil Appeal No. 1 of 2002**(Unreported), **Felix Tumbo Kisima Vs. TTCL and Another, Civil Application No. 1/1997** CAT (unreported) just to name a few.

In reply, the respondent argued that the applicant has failed to provide sufficient reasons within which he could be allowed to file the appeal out of time.

On my part, I will deal with the application from two perspectives, one is on the ground advanced by the applicant that he was not supplied with necessary documents for appeal, this is whether the law requires any documents while lodging an appeal from the Primary Court to this court. Two is on the period of delay, whether the applicant has accounted for the period of delay.

Beginning with the first line of argument, under paragraph 5 & 6 of the affidavit in support of the application, the applicant averred that he intended to file a memorandum of appeal at the High Court of Tanzania Dar-es-salaam and as a matter of procedure, he requested for a copy of judgment on 1st October, 2022. The relevant provisions to appeal to the High Court from the decision of the District Court originating from a Primary Court, is Section 25(3)&(4) of the MCA which provides:

*"(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."

The law above is clear that an appeal to this Court originating from the primary Court shall be by way of petition and not memorandum. However, the issue whether it is a petition or a memorandum is not fatal. The crucial issue is that the intended petition is to be filed in the District Court and not this Court as the applicant would want this court to believe. Sub-section 4 further explains on how the appeal should be dispatched to this court, it is the District Court which dispatches the records to this court. So what is the meaning of the provision? It means that the appellant does not need any requisite documents to lodge his petition of appeal. He should only file his petition and the obligation to dispatch the records of appeal with the petition is on the District Court. Furthermore, the applicant did not attach the letter that requested for the copy to support his averments. Therefore the argument that the applicant was awaiting requisite documents does not hold water to warrant extension of time.

The second determination is on the period of delay, whether the applicant has accounted for the period of delay. It is on records that the applicant appeared for execution on the 02nd day of November, 2022 and that is the day, as he averred in his affidavit, that he was served with a copy of judgment. Despite that date, this application was lodged in this court on the 17th day of January 2022 which is more than two and a half months from the date that he was served with a copy of the judgment should that have been relevant, let alone the actual count which is almost five months from the date the impugned decision was delivered. It is trite law that for

an application for extension of time to be granted, the applicant, must account for each day of delay and the duty of the court is to see whether the delay was inordinate. In the case of Bushiri Hassan Vs Latifa Lukiyo Mashayo, Civil Appln No 3 of 2007(unreported) the Court of Appeal of Tanzania held that:

"delay even of a single day has to be accounted otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken"

The same position was held in the cited case of **Yusuph Same and Another Vs. Hadija Yusuph** (Supra). As for the case at hand, the applicant failed to account for the period of delay not only from the date the impugned judgment was delivered, but also from the date he received a copy of the impugned judgment. That being the case, it is conclusive that the applicant has not established sufficient reasons to warrant this court to exercise its discretionary powers to extend time. The application is without merits and it is hereby dismissed with costs.

Application Dismissed with costs.

Dated at Dar-es-salaam this 04th day of April, 2023



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S. M. MAGHIMBI
JUDGE

