

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

CIVIL APPEAL NO. 20 OF 2021

(Originating from the District Court of Chunya District, at Chunya in Misc. Civil Application No. 7 of 2021.)

OXLEY LIMITED.....APPELLANT

VERSUS

NAHEL EDEN CORPORATION.....RESPONDENT

JUDGMENT

Date of Last Order: 27/04/2023

Date of Judgement: 15/06/2023

Ndunguru, J.

The appellant Oxley Limited through her advocate Jenifa Joely Silomba is challenging the decision of the District Court of Chunya, the ruling dated 30/11/2021. In that decision the District Court denied to grant the appellant with extension of time which was filed seeking to challenge the decision of Urban Primary Court of Chunya District.

In essence the District Court denied the appellant's application on the reason that the advanced ground for the delay i.e obtaining the copies of judgment and proceedings was not a conditional precedent in

appeals originating from the primary court. Felt discontented the appellant has preferred the instant appeal on three grounds that:

1. The District Court grossly erred in law and facts by not considering the requirement to obtain the copy of judgment and proceedings for thorough study in lieu of making decision culminating to filing an appeal against the decision of the Primary Court of Chunya Urban.
2. That the District Court erred in law and fact for ignoring the fact that there was illegality that required intervention of the Court hence extension to file an appeal.
3. That the trial tribunal(sic) grossly erred in law and facts by ignoring the appellant's submission while it was logical and reliable.

The appeal was heard *ex-parte* due to the failure of the respondent to enter appearance even though being duly served. It was argued by way of written submissions. Ms. Jenifa Joely Silomba, learned advocate appeared for the appellant.

Submitting in support of the appeal on the 1st ground, Ms. Silomba argued that even if it was rightly made by the District Court that copy of judgment and proceedings are not required to be accompanied to the

petition of appeal in the appeals originating from the primary court, without them one cannot be in position to advance grounds of appeal. It was her view that since the appellant was supplied with the copies of judgment belatedly, the same formed the sufficient reason to extend the time to file the appeal out of time.

On the second ground, she argued that the District Court sailed into error by failure to consider that there was illegality in the primary court's decision which required the intervention of the District Court on appeal. She sought reliance on different decisions of the Court of Appeal of Tanzania including the case of **Selemani Juma Masala vs Sylivester Paul Mosha & another**, Civil reference No. 13 of 2018 where it was held that illegality is sufficient reason for the extension of time.

Ms. Silomba argued regarding the third ground of appeal that the District Court would have considered that her application for extension of time was not challenged by the respondent hence the grounds set forth in her submissions before the District Court would have been allowed and the time extended. In the conclusion she urged this court to allow the appeal quash the decision of the District Court and order the matter be heard on merits.

I have keenly followed the contention of the appellant's counsel in this appeal. The issue for determination is none than whether the appeal is meritorious. As I have indicated above, the grievances by the appellant is the District Court denial to grant extension of time. Principally, granting or refusing to grant extension of time is absolutely the court's discretion. Nevertheless, the same has to be judiciously exercised upon sufficient cause being shown. See the case of **Benedict Mumello vs Bank of Tanzania**, Civil Application No. 12 of 2012 CAT (unreported).

Since the District Court refused to grant extension of time which was its discretionary power, in this appeal the question is whether in refusing to grant the application the District Court did it with reasons. Obviously, as the counsel for the appellant told this court in her submission that the District Court considered that the ground advanced by the appellant that she was delayed being supplied with copies of judgment and proceedings was not the requirement of the law, the counsel supports the District Court to have justification. I have also an opportunity to cross-check the decision of the District Court. It relied on section 20 (3) of the Magistrate's Courts Act, Cap.11 R.E 2019 and the decision of this court in **Gregory Raphael vs Pastory Rwehabula**, PC

Civil Appeal No. 30 of 2000 High Court at Tabora (unreported). Indeed, attaching or requesting the copies of judgement and proceedings is not a requirement of law in appeal originating from the primary courts.

The position of law was also undelined by the Court of Appeal of Tanzania in the case of **Sophia Mdee vs Andrew Mdee & Others**, Civil Appeal No. 5 of 2015 CAT at Arusha (unreported).

Additionally, the form and content of petition of appeal for matters originating from the primary court are stipulated under rule 4 of the Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules G.N. No. 312 of 1964 which state;

"Every petition of appeal to a District Court from a decision or order of a primary court and every petition of appeal to the High court from a decision or order of a District Court in the exercise of its appellate or revisional jurisdiction shall set out precisely and under distinct heads numbered consecutively the grounds of objection to the decision or order appealed against and shall be signed by the appellant or his agent."

In the foregone provision, it is apparent clear that one need not to firstly obtain the copies of the impugned judgment nor the proceedings.

The contention by the appellant's counsel that she needed the copies to see if she could appeal or not would not in any means form the sufficient ground for extension of time. I construe the counsel's argument that when the impugned judgment was pronounced the appellant did not know if she was aggrieved until she obtained the copies to read is when could see the necessity of appealing or not. That was her wishes and view which is not necessarily to be agreed by the court in its discretion to grant the extension of time. I would therefore not fault the District Court in this matter for that reason.

As regard to the 2nd ground of appeal I wanted to know whether the appellant pointed out any illegality before the District Court for it to grant the extension of time. Much as I concur with the appellant's counsel on the position of the law as far as the reason of illegality in granting of extension of time, I did not find any which was advanced before the District Court and so to this court. It was the counsel's contention that the primary court's judgement had two different dates of its delivery one being 15th April 2021 and another being 13th April 2021. Nonetheless, the complaint was not raised in the affidavit filed in the District Court. I further not consider it as an illegality worthy of granting extension of time.

In the 3rd ground of appeal, I have grasped that counsel for the appellant was of the view that since the appellant made an unchallenged application, the District Court was bound to grant it. I need not be laboured by this line of thinking. The court will not simply grant the application for extension of time due to the reason that the same was not challenged by the other side, it will however do so upon good/sufficient reasons being advanced by the applicant. As I have already found that the District Court was justified in denying to grant the appellant with extension of time. This ground of appeal is also want of merit.

In the premises, I find the entire appeal lack merits. I therefore dismiss it. No order as to costs as the appeal was heard *ex-parte*.

Ordered accordingly.




D.B. NDUNGURU,

JUDGE

15/06/2023