

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

PC. CRIMINAL APPEAL NO. 5 OF 2023

AISHA JUMA APPELLANT

VERSUS

EMMANUEL MILANZI RESPONDENT

RULING

Date of hearing: 23rd June 2023

Date of ruling: 30th June 2023

NGUNYALE, J.

The appellant is aggrieved by ruling in Misc. Criminal Application No. 19 of 2022 of the District Court of Mbeya in which he sought extension of time to be allowed to file the appeal against the judgment of the primary court of Mbeya district at Mbeya urban.

Briefly the appellant was charged and convicted with the offence of obtaining money by false pretence contrary to section 302 of the Penal Code [Cap 16 R: 3 2019 now R: E 2022] in the primary court of Mbeya district at Mbeya urban in Criminal Case No. 27 of 2020. It was alleged that the appellant obtained TZS 7,700,000/= from the respondent with

the view of selling him a plot at Veta Machinjioni, Ilomba within the district and region of Mbeya while aware that the said plot had dispute.

Upon her conviction he was sentenced to unconditional discharge for six months and ordered to repay the amount of TZS 7,700,000/= to the respondent. The appellant was late to file his appeal to the district court hence filed Criminal application No. 19 of 2022 for extension of time as stated earlier.

After hearing the application, the magistrate was satisfied that the appellant had failed to account each day of delay hence the application was dismissed.

The appellant is aggrieved by that decision and filed petition of appeal predicted in two grounds of appeal;

1. That the district magistrate erred in law and fact for failure to evaluate and consider the strong ground in her affidavit and submission and reach to wrong conclusion;
2. The district magistrate erred in law and facts to decide in favour of the respondent who adduced week submissions.

Upon being served with the petition of appeal the respondent filed reply to petition of appeal accompanied it with notice of preliminary objection to the effect that;

The appeal is bad in law for being wrong filed.

When the appeal came on for hearing parties appeared in person, without legal representation as the practice of the court when preliminary objection is raised, it ordered it to be disposed first ahead of merits of the appeal. The P.O was disposed through written submission.

In his submission the respondent argued that according to section 25(3) of the Magistrates' Courts Act [Cap 11 R: E 2019] (the MCA) the appeal was supposed to be filed in the district court.

He turned around and submitted that application for extension of time has its origin in the district court hence is filed directly to the high court. He added that the appeal has to be filed in the district court only when exercising its appellate or revision powers.

On the above submission he prayed the preliminary objection to be sustained and appeal struck out.

Responding to the above the appellant submitted that argument that section 25(3) of the MCA requires appeals to this court to be filed in the

district court is not supported by any provision of the law, hence it as tantamount to say it has not been prosecuted.

The appellant added that even if that is the case the respondent had not been prejudiced in any how. The case of **Christina Orgenes Nkya vs Republic**, Criminal Appeal No. 285 of 2007 was cited to me in support of the contention. It was further submission of the appellant that not all procedural irregularities are fatal unless lead to miscarriage of justice. That the same is saved by overriding principles which advocates for substantive justice. The case of **Boniface Mathew Malyango & Another vs Republic**, Criminal Appeal No. 358 of 2018 was cited to support the argument on applicability of overriding objective principles.

In rejoinder the respondent complained that the appellant had filed to grasp the submission in chief. He added that his preliminary objection had all qualities and criteria set in the case of **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd** [1969] EA 700.

It was further submission that overriding principles is not applicable in every circumstance of the case.

I have given considerable weight to the submission for and against preliminary objection. I agree with both parties that appeals originating in the primary court to the high court in terms of section 25(3) of the MCA

has to be filed in the district court which passed the decision. That is when the district court was exercising its power under appeal or revision. Similarly, I agree with the respondent that matters which has its origin in primary court by the district court exercise its power as the court of first instance like in this appeal application for extension of time, the appeal has to be filed directly to the high court. in the case of **Mathew Mlay vs Rashid Majid Kasenga**, Civil Application No. 354 of 2020 [2022] TZCA 524 (CAT at Dar es Salaam; www.tanzlii.org.tz; 31 August 2022).

"Similarly, in the present application, a distinction must be drawn between the fact that the matter was originally filed at the Ward Tribunal, which is not disputed, and the more relevant question of which decision is subject of the revision. What matters is whether the decision of the Ward Tribunal is the one that is instantly the subject of appeal or revision. The crux of the matter subsequent to the decision of the Ward Tribunal, is extension of time to appeal, on the ground of illegality. This pursuit commenced at the DLHT, not the Ward Tribunal, and went on appeal for the first time before Maige, J (as he then was) in Land Appeal No. 51 of 2018. If the applicant intended to appeal against the decision in Land Appeal No. 51 of 2018, all he needed was leave to appeal in 9 terms of section 47 (2) of the Act, as a certificate on a point of law was uncalled for."

In the present appeal the appellant wants to assail the ruling of the magistrate sitting in the district court who denied him extension of time, the application was for the first time registered in the district court, hence it was exercising original jurisdiction, the appeal therefrom is filed directly to this court.

I have perused the petition of appeal and found that nowhere is showing the court in which it was filed because the stamp on it only shows that it was filed online but does not indicate in which court apart from being signed by a registry officer. On those environments I have failed to go along with the respondent that it was filed in wrong court as even the respondent himself did not cite the court in which the appeal was first filed.

Regarding applicability of overriding objective principle as submitted by parties, following the decision I have made above, it will be wastage of time to discuss if overriding principle is applicable to this case or not.

Given the above, I overrule the preliminary objection.

DATED at MBEYA this 30th day of June 2023




D.P. Ngunyale
Judge