

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

TEMEKE SUB-REGISTRY

(ONE STOP CENTRE)

AT TEMEKE

CIVIL APPEAL NO. 28649 OF 2023

Arising from the Probate Appeal No. 30 of 2022 at the District Court of Temeke at
One Stop Centre-Temeke)

KIBIBI MOHAMED KIBANGU.....1ST APPELLANT

SHABAN RAJABU HATIBU.....2ND APPELLANT

RUKIA JUMA MBONDE.....3RD APPELLANT

VERSUS

YUKUBU RASHID MBONDE.....1ST RESPONDENT

HALIMA RASHID MBONDE.....2ND RESPONDENT

ASIA RASHID MBONDE.....3RD RESPONDENT

FATUMA RASHID MBONDE.....4TH RESPONDENT

HADIJA RASHID MBONDE.....5TH RESPONDENT

RULING

22nd March & 16th May, 2024

BARTHY, J.:

The appellants named above, being aggrieved by the judgment and decree of the Temeke District Court at the One Stop Judicial Centre in Temeke in Probate Appeal No. 30 of 2022, appeal against the decision and orders on the following grounds;



1. *That, the learned magistrate erred in law and for nullifying the appointment of the 2nd and 3^d appellant as Administrator and Administratrix respectively of the estate of the late Rashid Mohamed Mbonde.*
2. *That, the learned Magistrate erred in law and fact for appointing the 4th respondent as the co-administratrix in total disregard of her previous efforts to disqualify the 1st appellant from the estate of the late Rashid Mohamed Mbonde.*

Wherefore, the appellants prayed for the following reliefs: an order quashing the decision and order of the appellate court, restoring the 2nd and 3rd appellants to their former positions, an order nullifying the appointment of the 4th respondent as co-administratrix, and any other relief deemed fit and just to be granted by this court.

However, the appeal was heavily resisted by the respondents, who raised a point of preliminary objection, arguing that the appeal is time-barred, and prayed for its dismissal with costs. The hearing of the preliminary objection was disposed of by way of written submissions, both parties filed their written submissions timely.

Submitting in chief in support of the preliminary objection raised, for the respondents was Ms. Loveness Ngowi, who argued that the

appeal emanates from Probate Appeal No. 30 of 2022 from the District Court that determined the appeal matter.

She argued that the appeal lodged is time-barred and has contravened the provision of Section 25(1)(b) of the Magistrates Courts Act, Cap 11, R.E 2019 (the Magistrates' Courts Act), which requires the appeal from the District Court to the High Court to be filed within 30 days from the date the decision was delivered in the exercise of appellate or revisional powers. To bolster their arguments, they cited the case of **The Heritage Insurance Co. Tanzania Ltd vs Mary Osward Chuwa and Others** (Civil Appeal No. 7 of 2022), high court at Moshi [2023] TZHC 19945, page 7.

Ms. Ngowi argued that the decision of the District Court was delivered on 14/11/2023 before Hon. Mwaisaka, SRM, whereas this petition was filed on 28/12/2023. This is about 45 days from the date the court's judgment was delivered, which exceeds the 30-day period required under Section 25(1) (b) of the Magistrates Courts Act. Therefore, the appeal was time-barred.

She added that the appellants prepared and signed the petition on 18/12/2023, before uploading the said petition in the Case Management System, thus filing it out of time. The appellants' remedy was to apply for an extension of time to file an appeal out of time, as provided under

Section 25(1) (b) of the Magistrates Courts Act and Section 14 of the Law of Limitation Act, Cap 89, R.E 2019 (the Law of Limitation Act). Thus, Ms. Ngowi prayed for dismissal of appeal under Section 3(1) of the Law of Limitation Act.

In their reply submission to the preliminary objection, the appellants had little to offer other than conceding to the objection and placing blame on an anonymous individual who advised them that they had 45 days to appeal to the District Court, without considering that the appeal originated from the Primary Court.

The appellants further submitted that they encountered difficulties in filing the petition, as it was challenging to obtain a reference number, and hence they filed the petition after the lapse of 43 days. Therefore, they prayed for their appeal to be struck out without costs, to enable them to seek leave to appeal out of time.

Upon careful examination of the arguments presented by both parties concerning the preliminary objections raised; this court is now tasked with determining whether the appeal was filed beyond the prescribed time limit.

Gathering from the submissions of both sides, it is noted that the appellants have conceded to have filed their appeal out of time. It is also noted that the parties are in consensus that this appeal emanates

from Probate Appeal No. 30 of 2022, the ruling of which was delivered on 14/11/2023 before Hon. Mwaisaka, SRM.

The provision of Section 25(1) (b) of the Magistrates Courts Act provides the time to appeal from the District Court to the High Court when exercising its appellate or revisional jurisdiction to be 30 days. For easy reference, it is reproduced below:

*25(1) (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 there from 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. [Emphasis is supplied].*

It was pointed out by Ms. Ngowi that the appellants prepared and signed the petition on 18/12/2023, then uploaded the said petition to the Case Management System on 30/12/2023. I had a chance to go through the petition of appeal and the decision of the district court attached to the petition. It shows that the copy of judgment was issued on 12/11/2023; however, it was not made clear when the appellants



had requested and been supplied with a copy of the said judgment. Thus, computing the time from 14/11/2023 to 30/12/2023 makes a total of 46 days, as opposed to the 30 days prescribed by the law.

The appellants, in their submission, stated that they faced some difficulties obtaining a reference number. With regard to this argument, under section 24(5) of the Judicature and Application of Laws Act (Electronic Filing), Cap 358, it is clearly provided that if a party encounters any problem, they should address it to the registrar or the Magistrate in charge, so that the period of computation can be excluded. The said provision is quoted hereunder for easy reference as follows;

"Where party misses a filing deadline due to technical problems referred to in sub-rule (1) the party shall move informally and ex parte the Registrar or the magistrate in-charge not later than 15:00 hrs of the following working day for appropriate relief." [Emphasis is supplied].

In the instant case, no complaint was filed by the appellants to any judicial officers mentioned in the provision regarding the difficulties as submitted by the parties. Additionally, they do not have an affidavit from any judicial officer to substantiate the claim, as stated in the case of **Franconia Investment Ltd v. TIB Development Bank Ltd**, Civil



Application No. 270/1 of 2020, Court of Appeal at Dar es Salaam (unreported).

Since it is clear that the appeal was filed out of time by the appellants, without prior seeking leave of this court for an extension of time to appeal in terms of Section 25(1) (b) of the Magistrates Courts Act, the important question to be asked is: what is the way forward?

Ms. Ngowi had sought the order for dismissal as the matter was filed out of time; whereas the appellant prayed for the matter to be struck out to enable them to seek an extension of time to file the appeal out of time.

Since Section 25(1) (b) of the Magistrates Courts Act doesn't offer any specific remedy for situations like this, this issue brings to mind the case of **Barclays Bank Tanzania Limited vs Phylisiah Hussein Mcheni** (Civil Appeal 19 of 2016) [2021] TZCA 2022 quoting with approval the case of **Nyachiya vs Tanzania Union of Industrial & Commercial Workers** (Civil Appeal 79 of 2001) [2005] TZCA 66 where a comparable situation arose and the Court held that;

*although the Law Reform (Fatal Accidents and Miscellaneous Provisions) Ordinance **set the time limit for instituting actions to be six months, but did not provide for the consequences of filing a matter out***

*of time, section 3 of the Act was applicable in dismissing the petition. In view of that position of the law, it is our conclusion that **the learned High Court Judge should have resorted to section 3 (1) of the Act to dismiss the complaint instead of striking it out as she did.***

[Emphasis is supplied].

As indicated in Section 25(1) (b) of the Magistrates' Courts Act, the time limit for appeals from the district court to the high court is 30 days when exercising its appellate jurisdiction. However, this provision does not stipulate the consequences for exceeding the time limit. Therefore, this court must resort to the provisions of Section 46 of the Law of Limitation Act.

Since the matter has been presented after the expiration of the prescribed time, the only available remedy is to dismiss the appeal under Section 3(1) of the Law of Limitation Act. Given the nature of this matter, I make no order as to costs.

It is so ordered.

Dated at Dar es Salaam this 16th day of May, 2024.




G. N. BARTHY
JUDGE