

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

THE SUB-REGISTRY OF MWANZA

AT MWANZA

PC CIVIL APPEAL NO. 25828 OF 2023

(Arising from Probate Appeal No. 13 of 2023 of Magu District Court and originating from Probate Cause No. 20 of 2022 of Kisesa Primary Court)

EMMANUEL TITO WAYALA1ST APPELLANT

CHARLES TITO WAYALA 2ND APPELLANT

VERSUS

ESTER TITO WAYALA RESPONDENT

JUDGMENT

29th & 31st May 2024

CHUMA, J.

This appeal has a long historical background from 1991 upon the demise of **Tito Wayala** the father of the parties herein. Through Probate No. 10 of 1991 the eldest son of Tito Wayala (the deceased) **Charles Tito** applied for letters of administration before Kisesa Primary Court (herein the trial Court). His application was however dismissed on 14/4/2092. On the second attempt, **Dr. William Tito Maige Wayala** in 2013 was appointed to administer the deceased estates vide the same probate No. 10 of 1991. His appointment was however contested by the applicants herein whose objection was overruled by the trial court. The appellant's appeal to the District Court of Magu vide Probate Appeal No. 99 of 2012

was dismissed. On their second appeal (PC Probate Appeal No., 21 of 2013) this court allowed their appeal therefore the appointment of **Dr. William Tito Maige Wayala** ended. The latter appealed to the Court of Appeal vide Civil Appeal No. 31 of 2019 but his appeal was struck out for being out of time.

The present appeal emanates from the third application made by the respondent herein vide Probate Cause No. 20 of 2022. The respondent was appointed by the trial court on 16/8/2022. Two days after appointment the appellants herein filed an application for revocation of her appointment. The trial court canceled her appointment for the reason that the appointment was *per in curium* to the decision of this court in PC Probate Appeal No. 21 of 2013.

The respondent successfully appealed to the District Court of Magu vide Probate Appeal No. 13 of 2023. The District Court's decision was to the effect that there is no decision of the court in place which forbids appointment of the administrator of the estates and that to avoid ongoing disagreements between the heirs it is better to have an administrator of

the estates of the deceased. Being dissatisfied, the appellants filed this appeal. The appeal contains three grounds;

1. The first appellate court erred in law for disregarding the verdict of this court, De-Mello J; in PC Probate Appeal No., 21 of 2013 which conclusively settled the administration issues of the deceased;
2. The verdict of the first appellate court is otherwise faulty and bad in law for being based on extraneous matters; and
3. The first appellate court erred in law for failure to hold that instituting probate and administration cause after 21 years from the date of demise of the deceased was an unwarrantable delay and intended to create chaos within the already settled family.

The appeal was argued by way of written submissions. The submissions were drawn and filed by Mr. Edward John and Ms. Marina Mashimba both learned advocates for the appellants and respondent respectively.

In the course of composing the judgment, I noticed that the appeal was filed out of time. I then invited counsels for the parties to address the court whether the appeal was filed within time or otherwise. It was the submissions of Mr. John Edward that the appeal was filed within time. This is because the matter started in Primary Court, and thereafter appealed to the District Court where its decision was delivered on 15/08/2023.

Dissatisfied by the decision of the District Court, the appellant via Mr. Mwanalyela Learned advocate filed an appeal electronically on 29/08/2023. The appeal delayed its process and was admitted on 04/09/2023 by then the filling was done to JSDS. The control number was once again generated and issued on 11/09/2023. The payment was made on 14/09/2023. The hard copy was filed to the District Court on 03/10/2023 and issued with a receipt.

According to Rule 21 of Electronic Filing Rules 2018, GN No. 148/2018, the document is deemed to have been duly filed upon electronic submission.

Since the appeal was filed on 29/08/2023 it was within time. In the case of **Josiah Zephania Warioba V. Bouy Bues Energy** Misc. Application No. 28/2021 HC. Labor Division held that according to

Electronic Filing Rules GN No. 148/2018, a document is deemed to have been filed when it is submitted and admitted. A party cannot be condemned if a technical error is caused by the judicial staff due to the negligence of the party of court staff or a technical error in the filing system.

He as well stated that the above position was also discussed in the case of **Mohamed Haship V. NMB** Revision No. 06/2020. He went on arguing that on 03/10/2023 is where the appellant lodged a hard copy after the conclusion of the online filing process. And that JSDS II had a number of technical problems that's why all that happened.

He finally prayed this court to consider his submission and find this appeal being filed within time.

In response Mr. Iche Mwakila, Advocate contended that the issue before this court is whether the appeal was filed timely or not.

The decision is subject to appeal was delivered on 15/08/2023. Court record reveals that the appeal was filed on 03/10/2023.No doubt, this matter arose from Primary Court. The District Court heard it in the appeal stage.

The Law governing this appeal is Magistrate Court Act Cap 11 S. 25 (1) (b) of MCA provides that, appeals have to be lodged within 30 days from the date of decision. By computation, this appeal was filed 48 days from the date of the decision subject to this appeal. The appeal is out of time for 18 days.

Regarding the submission of Mr. John Edward, Mr. Mwakila had the following to say.

According to him the appeal was filed on 29/08/2023, admitted on 04/09/2023, and control number was issued on 11/09/2023, and the hard copy was lodged on 03/10/2023.

The deadline to file an appeal was on 15/09/2023. Several HC cases including the case of **John Nevava V. Raphael Francis Kimyo** PC Civil Appeal No. 09/2023 Tiganga J. on page 7 citing with approval the case of **Gregory Raphael V. Pastory Rwebula** [2005] TLR 99 where it was held that process of filing is complete when a petition of appeal is filed and payment effected. Guided by the above authority, the submission by Mr. John Edward that the payment was done on 14/09/2023 if at all is true, then the appeal was within time. But can be so if the court record reflects

so. Regarding the hard copy which was received on 03/10/2023, Mr. Mwakila had nothing to argue.

In his brief rejoinder, Mr. John Edward insisted that the appeal was filed within time. He prayed the court to crosscheck the JSDS system which was used in filling this appeal for approval and at the end urged this court to proceed deciding this appeal on merit.

Having examined and given due consideration to the submissions by both parties, I will now determine whether this appeal was filed within time.

In this matter, the parties are all in consensus that the judgment was delivered on 15/8/2023. Appeals before this court for matters originating from the Primary Court are governed by section 25 (1) (b) of the Magistrates Courts Act, Cap 11 R.E 2019 which reads;

*"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 added)

Therefore, thirty days are counted from the date of the decision, and the manner of filling the appeal is provided by sections 25 (3) and (4);

*"(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 petition, together with the record of the proceedings in the primary court and the district court, to the High Court."

According to the submission of Mr. John Edward Learned counsel for the appellant, the instant appeal was filed electronically on 29/08/2023. And that the appeal delayed its process and was admitted on 04/09/2023 by then the filling was done via JSDS. The control number was once again generated and issued on 11/09/2023 and the payment was effected on 14/09/2023. The hard copy was filed to the District Court on 03/10/2023 and issued with a receipt.

On his side Mr. Mwakila Learned advocate for the respondent stated that the deadline to file an appeal was on 15/09/2023 and that the submission by Mr. John Edward that the payment was done on 14/09/2023

if at all is true, and the court records reflect so then the appeal was within time.

I join hands with the submission of Mr. John Edward on one hand according to Electronic Filing Rules GN No. 148/2018, a document is deemed to have been filed when it is submitted and admitted. see the case of **Josiah Zephania Warrioba and Mohamed Haship** (Supra). I might be true that the instant appeal was really lodged electronically on 29/8/2023, admitted on 4/9/2023, issued with control number on 11/9/2023, and payment done on 14/9/2023. However, the submission was not supported with any proof other than mere words in all those processes. In such circumstances how can this court believe what has been submitted? I don't see such possibility.

My close look into the court record and system reveals that the instant appeal was dated and signed on 14/9/2023 and presented for filing to Magu District Court on 3/10/2023 a date of payment as well. The petition was dispatched to the High Court and was filed on 21/11/2023 a date of admission as well. Going by the court records and in the absence of any tangible proof from Mr. John Edward advocates for the appellant, his submission is out of context.

I consequently proceed to dismiss it. I desist from ordering costs because it is a probate matter involving siblings. I so order.

Right of Appeal fully explained to the parties.

DATED at **MWANZA** this 31st day of May 2024




W. M. CHUMA
JUDGE

Judgment delivered in court before Mr. John, Advocate for the Appellant and Mr. Iche Mwakila, Advocate for the Respondent this 31.05.2024.


W. M. CHUMA
JUDGE