

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

THE SUB-REGISTRY OF MWANZA

AT MWANZA

CIVIL APPEAL NO. 7613 OF 2024

(Arising from the decision of the District Court of Sengerema at Sengerema in Civil Appeal No.26211 of 2023, originating from the judgment of Busulwangili Primary Court in probate cause No. 02 of 2023, dated 25th March 2024.)

BETWEEN

TABU AMRI MANUNGWA.....1ST APPELLANT

AMRI RAMADHAN RAJABU.....2ND APPELLANT

AND

KULWA SEIF.....1ST RESPONDENT

HASHIM RAMADHAN.....2ND RESPONDENT

RULING

5th & 11th day of June 2024

CHUMA, J.

The Appellants above mentioned being aggrieved by the decision of the District Court of Sengerema at Sengerema in Civil Appeal No.26211 appealed to this court advancing four grounds. However, on the 23rd day of May/2024, the appeal faced preliminary objection from the respondents via their Learned counsels. The raised objection containing only one point is to the effect that;

The appeal was wrongly filed before this court by filing

directly to the High Court instead of first being filed before the District Court for cases originating from the Primary Court.

At the hearing of the raised objection, Mr. Revocatus Sedede Learned counsel represented the appellants while Mr. Kassimu Gilla, Msafilri Henga, and Paul Kipeja appeared for the respondents.

Submitting in support of the raised objection Mr. Kassimu Gilla learned counsel for respondents argued that, the instant appeal was filed direct to the High Court but matters originating from Primary Court ought to be filed before Sengerema District Court which will dispatch to the High Court as per section 25 (3) and (4) of The Magistrates Court Act (MCA) read together with Rule 5(3) of The Civil Procedure (Appels in proceedings originating in Primary Court) Rules GN 312 of 1964.

To bolster his submission, he invited this court to the case of **Gregory Raphael V Pastory Rwehabula** TLR 2005 no 99 pages 101 and 102 first and second paragraphs. Mr. Kassim further stated that this court lacks jurisdiction to entertain this appeal for being improper before it as it was filed in the wrong court or registry. He therefore prayed it be dismissed with cost.

Replying to Mr. Gilla's submission Mr. Sedede Learned counsel for the appellants contended that, according to Rule 5 of GN No 312/1964 cited by Mr Kassimu does not show any consequences nor even contain directives on a place of filing matters originated from primary court. It is not couched in mandatory terms. But also, section 25(1) (b) of MCA provides that every appeal from the District Court has to be filed in the High Court within 30 days from the date of judgment delivery. Section 19 of MCA and 5th Schedule to the MCA provides procedures on how to deal with probate cases originating from the primary court but does not indicate the filing of appeals to the District Court as submitted by Mr. Kassimu Gilla's advocate. It is not in dispute that the District Court is custodian of the documents from the Primary Court and the essence of section 25 cited by Mr Gilla is for the collection of the documents from the Primary Court and dispatch them to the High Court and also to avoid taking the adverse party into surprise.

Mr. Sedede went on arguing that, the record indicates that the case file which was under District Court as custodian is before this court, and parties have been served with necessary documents or pleadings before even expiration of 30 days. The essence of section 25(3) is already covered. More so this court is duty-bound to comply with article 107A of

the URT Constitution in not entertaining technicalities in dispensing justice. Also under sections 29 and 30 of MCA, this court has been empowered to determine matters regardless of whether the procedures were followed or not. Even if we are to agree with the raised objection still there illegal issues which requires the intervention of this court for its rectification in the interest of justice.

The cited section 25(3) does not bar this court's jurisdiction to determine this case despite non-compliance of the filing procedures. Whether the procedure was followed or not this has power to entertain as it was held by this court in the case of **Farida Hamza V Geoffrey Kabaka** Land Appeal No 155 of 2016. Guided by the above case this court can still determine this case without being tied with technicalities, the central element being substantive justice.

The present appeal its content is the issue of jurisdiction which can be raised at any stage of a case. This case has a public interest, and the public is waiting for its decision and the issue of technicalities are matter not known to them. The respondents did not show what rights have been jeopardized. He invited this court to a case of **Fabian Bisaya V. Azori Bisaya PC Probate Appeal No. 2 of 2019 and Amie Sanga V Lucian Sanga** PC Civil Appeal No. 82 of 2021. He also referred this court to what

he termed it as new law namely Judicature and Application of Laws (Electronic Filing) Rules GN 148 of 2018 which provides for electronic filing procedures but does not require matters originating from the primary court to be filled in the District Court on appeals to the High Court. And is a specific rule which provides for such procedures. Mr. Sedede also stated that, in case this appeal is struck out will leave a vacuum on the decision by the trial court. Lastly, he invited this court once again to the case of **Farida**(supra) on pages 8 and 9 where the Court decided the matter regardless of technicalities and finally requested the raised objection be dismissed.

In his rejoinder, Mr. Kassimu began by commenting on **Faridas's** case(supra) by arguing that, the circumstance of that case and the present one differs hence his submission is out of context. But the other cases of **Fabian and Amie(supra)** are also distinguishable because their circumstances are quite different. Likewise the cited GN No 148/2018 Electronic Filing Rules, it was his contention that, the rules cannot superceed the main Act which is MCA having procedures on how to file those matters originated from the primary court. The provisions of Section 25 of MCA have never been amended to date hence the requirements remain intact and have to be complied with. The District Court has to

endorse pleadings filed there on matters originated from the primary court which are subject to an appeal to the High Court. Section 29 and 30 of MCA all these provisions have nothing to do with the instant objection because section 29 is all about the powers of the court when hearing appeals. Section 30 of MCA deals with the supervisory powers of the High Court on its own motion. Also, this provision has nothing to do with objection beforehand.

As to the cited article 107 A (2) of the Constitution of the URT which curtails entertainment of technicalities, Mr. Kassimu argued that their concern is not a matter of technicality but rather a matter of law and the terms used there is shall that is section 25(3) and (4) of MCA which connotes mandatory requirement. He did support his submission to the case of **Martin B Kumarija and 117 others V Iron and Steel Limited** Civil Application No 70/18 of 2018 on page 9.

The cited section 25(1)(b) of MCA which according to Mr. Sedede allows appeals from the District Court to be filed to the High Court within 30 days, the provision does not provide so rather it provides that the aggrieved party may appeal to the High court it does not provide a procedure of filling. The cited section 19 of MCA and 5th Schedule to the MCA nowhere does the cited provision provide for the mode of filling

appeals. He did insist that procedures be provided in the case of **Gregory**(supra). He therefore was of the view that the cited provisions by Mr Sedede are out of context. The cited Rule 5 bears the word shall contrary to what was submitted by Mr Sedede's advocate. Mr. Kassimu finally prayed this appeal be dismissed with cost.

I have thoroughly gone through the court records along with the rival arguments for and against the raised preliminary objection from both Learned counsels, the issue for determination is whether the objection is meritorious.

Going by the record and parties' submission, it is amply clear that the instant appeal was filed directly to the High Court as rightly pointed out by Mr. Kassimu Gilla Learned counsel for the respondents. In Law, the filing of such an appeal to this court is required to be done in the very district court which handed down the decision. This is provided for under S.25(3) of the Magistrates' Court Act,1984 and Rule 5(3) of the Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules G.N. No. 312 of 1964 which provides for the registration and endorsement of appeals originating from Primary Courts filed at the district court before dispatching it to the High Court.

Section 25 (3) of MCA reads;

25(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 of which the appeal is brought.

(Underscoring is mine).

Since this appeal was filed before the High Court Registry, the filing contravened the mandatory requirement of the above-quoted provision of law. See the case of **Rucus (Ruchius) Felix V. Juvenalis Boniphace (PC)** Civil Appeal No. 103 of 1996 and **Deusdedith Lwamulaza V. Hamza Rajab& Another (PC)** Civil Appeal No.117 of 1995.

The argument by Mr. Sedede's Learned counsel that the essence of section 25 cited by Mr. Gilla is for the collection of the documents from the Primary court and dispatch them to the High Court and also to avoid taking the adverse party by surprise. Sections 19 and 30 of MCA and GN No 148/2018 Electronic Filling Rules are out of context as they have nothing to do with the raised objection. I decline also to side with Mr. Sedede's argument that section 25 of MCA is for the collection of documents from Primary Court because that is a purely misleading argument so to say which was not expected to come from the Learned counsel for provisions that are so simple and clear demanding no rocket science to understand.

As to the cited article 107 A (2) of the Constitution of the URT which curtails entertainment of technicalities as rightly submitted by Mr. Kassimu the instant concern is not a matter of technicality but rather a matter of law and the terms used there is **shall** that is section 25(3) and (4) of MCA which connotes mandatory requirement. The argument of Mr. Sedede for the appellant is nowhere to stand on for want of merit.

In the final analysis, the raised objection is meritorious and therefore sustained. The appeal is struck out with cost.

Dated at **MWANZA** this 11th day of June 2024.




W.M CHUMA
JUDGE

Ruling delivered in open court before Mr. Kassimu Gilla and Paul Kipeja Learned counsel for the respondents in presence of the appellant and in absence of the applicants Learned counsel this 11th day of June 2024.


W.M CHUMA
JUDGE