

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**MBEYA SUB-REGISTRY**  
**AT MBEYA**

**CRIMINAL APPEAL NO. 11 OF 2023**

*(Arising from the District Court of Ileje at Ileje, in Criminal Appeal No. 2 of 2023,  
Originated in the Primary Court of Ileje District at Sange/Mutula in Criminal Case No.  
4 of 2023)*

**PETER S/O MBWAGHA.....APPELLANT**

**VERSUS**

**SOPHINEDA NYEMBA..... RESPONDENT**

**JUDGMENT**

*Date of Last Order: 22/04/2024*

*Date of Judgment: 28/06/2024*

**NDUNGURU, J.**

Before the Primary Court of Ileje District at Sange/Mtula, the appellant Peter Mbwagha was charged for the offence of Criminal Trespass contrary to section 299 (a) of the Penal Code, Cap. 16 R.E 2019 (Now, R.E 2022) in Criminal Case No. 4 of 2022.

It was the allegation of the respondent who was the complainant before the Primary Court that the appellant criminally trespassed into a land of one Jangalamu Nyemba. According to him, the respondent stood as the complainant on the ground that he is the custodian of the said

land which is the family land. It was further claimed that following the trespass, the appellant destructed some properties therein.

In his defence the appellant claimed to be also a custodian of the land which he said to be a clan land that, it was owned by his grand father then transferred to his father.

Upon hearing the evidence of both parties, the Primary Court on 7/03/2023 passed a judgment. In the judgment it decided that the dispute between the two (appellant and respondent) was a land ownership dispute of which the Primary Court cannot decide for lack of jurisdiction. It thus acquitted the appellant.

The respondent was discontented, he appealed to the District Court. The petition of appeal filed in the District Court indicated to have been filed on 20/6/2023. The District Court heard the appeal *ex-parte*, that is in the absence of the appellant. It then reached to the decision against the appellant by turning the Primary Court decision. In that decision the appellant was convicted and sentenced for three (3) months imprisonment.

Aggrieved, the appellant appealed to this court raising five (5) grounds of grievances. However, for the reasons to be appellant in this

judgment, I will only resolve the 5<sup>th</sup> ground, the complaint that the District Court erred when entertained a time barred appeal.

At the hearing of the appeal Mr. Yona Frank, learned advocate represented the appellant while the respondent had no legal representation. It was argued by way of written submission.

Arguing in relation to the 5<sup>th</sup> ground of appeal, Mr. Frank submitted that the appeal before the District Court was filed beyond 30 days which is the time limit for filing appeals of that nature. He relied under section 20(3) of the Magistrates' Courts Act, Cap. 11 R.E 2019. Mr. Frank further argued that issue of time limit goes to the jurisdiction of the court. to substantiate his argument, he cited the case of **Juma Lupili vs Charles Ngobetse**, Civil Appeal No. 487 of 2022 CAT at Kigoma (unreported) and **District Executive Director of Kilwa Distirtict vs Bogeta Engineering Ltd**, Civil Appeal No. 37 of 2017. He also argued that since there was no extension of time granted to the respondent for him to file the appeal out of time, the District Court lacked jurisdiction to entertain the same.

In response to the very ground of appeal, the respondent did not oppose to have filled the appeal out of prescribed time. Nonetheless, he contended that the issue of time limitation is a procedural technicality

which courts are warned not to be bound by them in the process of determining rights of the parties. He held the view that this appeal be dismissed since the ground of appeal does not go to the root of the case.

On my part, I am constrained to concur with Mr. Frank that the issue of time limitation goes to the jurisdiction of the Court, see **D. P. P. Bernard Mpangala and Others** Criminal Appeal No. 28 of 2001 CAT at Dar es Salaam (unreported) and **Nbc Limited & Another vs Bruno Vitus Swalo** (Civil Appeal 331 of 2019) [2021] TZCA 122 (20 April 2021) where it was stated that:

*"Limitation period has an impact on jurisdiction. Courts lack jurisdiction to entertain matters for which litigation period has expired,.."*

It is also true, as argues by Mr. Frank that, appeal from Primary Courts to the District Courts are supposed to be filled within 30 days from the date of delivery of the judgment as per section 20 (3) of the Magistrates Courts Act. It provides that:

*"(3) Every appeal to a district court shall be by way of petition and shall be filed in the district court within thirty*

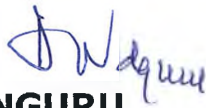
*days after the date of the decision or order against which the appeal is brought."*

The respondent did not dispute and the record shows that the Primary Court decision, the subject of this matter was delivered on 7/03/2023 and the respondent filed his appeal to the District Court on 20/6/2023. It needs no rocket scient to come to the conclusion that the appeal before the District Court was time barred. It was filed after a lapse of three months out of 30 days require by the law. The claim by the respondent that it is procedural technicalities is a misconception as I have demonstrated earlier on that it is jurisdiction issue.

Since the District Court had no jurisdiction, this court lacks jurisdiction too. The available remedy however is to nullify the proceeding and quash the judgment and the resultant order. Very unfortunately, the appellant served a custodial sentence resulting from nullity proceedings which this court has nothing to order in relation to the already served custodial sentence.

Order accordingly.



  
**D.B. NDUNGURU**  
**JUDGE**  
**28/06/2024**