

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

PC. CIVIL APPEAL. NO. 106 OF 2004

*(Arising from Mwanza District Court Misc. Civ. Appl No. 7B/2003. Originating
from Ilemela P/Court Civ. Case No. 79/2002)*

ELIZABETH DAUDIAPPLICANT

Versus

NTEMI ZACHARIA RESPONDENT

JUDGMENT

27.10.2008 – 04.11.2008

G. K. RWAKIBARILA. J

This is an appeal by **Elizabeth Daudi** against the decision i
Mwanza District Court Miscellaneous Civil Application No. 7B of 2003.
Respondent in that application was Ntemi Zacharia who is also the
respondent in this appeal.

The District Court in that application dismissed an application
by this appellant to seek leave to appeal out of time against a
judgment which was delivered by Ilemela Primary Court on
01.10.2002.

Records of the primary and district courts show that appellant
filed her appeal on 19.11.2002 vide ERV No. 16868138 of Tshs:
1,500/=. Therefore she lodged an appeal some 48 days after the
judgment of the primary court was delivered.

In her ruling on 30.01.2004 before dismissing appellant's application to appeal out of time, the district magistrate observed, **inter alia**, that:

"There was sufficient time for the applicant to prepare her grounds of appeal and file her appeal within thirty days from the day of the decision of the lower court was delivered."

This observation by the district court magistrate concur with what is provided under section 20 (3) of the **Magistrate's Court Act, Cap. 11 (R.E. 2002)** which provides that:

"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."

It is provided further under sub-section 4 (a) of that section 20 of the **Magistrate's Court Act** how the district court may extend the time for filing an appeal either before or after such period has expired. But the district magistrate also correctly addressed herself on such a situation and pointed out that it was not conducive to invoke it because appellant's intended appeal had no chances of success.

The reason advanced by the trial primary court in civil case No. 7 of 2002 and later accepted by the District court during the first appeal was that respondent cleared the suit land and developed it from 1970 without any interference and remained in its quiet enjoyment for more than twenty years. Appellant could not claim it from respondent after eleven years because time for limitation on a suit of that nature is only eleven years.

So long as the appeal to the district court was lodged on 19/11/2002 which was 48 days (instead of 30) after the judgment of the primary court was delivered, it had no merit and therefore this appeal is dismissed with costs.

G.K. Rwakibarila

JUDGE

30/10/2008

Date: 4th/11/2008

Coram: G. K. Rwakibarila. J

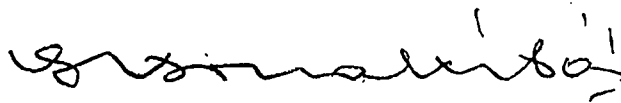
Applicant: Present in person

Respondent: Mr. Nasimire

B/C: Leonard

Court:

Judgment has been delivered at Mwanza this 4th day of November, 2008 and right to appeal in time has been explained thoroughly.



G. K. Rwakibarila

JUDGE

At Mwanza

04.11.2008