

**IN THE COURT OF APPEAL OF TANZANIA  
AT ARUSHA**

**(CORAM: LILA, J.A., GALEBA, J.A. And MGEYEKWA, J.A.)**

**CIVIL APPEAL NO. 512 OF 2020**

**UPENDO ELIGI KESSY ..... 1<sup>ST</sup> APPELLANT**

**FURAHA ELIGI KESSY ..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

**HONORATA ELIGI KESSY .....RESPONDENT**

**(Appeal from the judgment and decree of the High Court of Tanzania  
at Arusha)**

**(Maghimbi, J.)**

**dated the 12<sup>nd</sup> day of June, 2017**

**in**

**PC Civil Appeal No. 3 of 2017**

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**JUDGMENT OF THE COURT**

6<sup>th</sup> & 23<sup>rd</sup> February, 2024

**LILA, J.A.:**

The parties to this appeal are blood related. They are of the same father but different mothers. Their father was one Eligi Roman Kessy who died intestate. The appellants were children of the deceased's second wife. After his demise and for reasons not relevant here, letters of administration of his estate were granted by Maji ya Chai Primary Court to his first wife one Leah Eligi and, upon revocation, the same was granted to one Sylvester Kazi who was also later replaced by

respondent. It was during Sylvester Kazi's tenure when a dispute arose over ownership of a 2 ½ acre piece of land in Manyire area which the appellants objected its being included in the deceased's estate subject to distribution to the rightful heirs. The appellants contended that it was bequeathed to them before the demise of their late father. The primary court held in favour of the appellants declaring the said land not to be part of the deceased estate. Acting on the appellant's complaint that Sylvester Kazi had distributed the said 2 1/2 acres to the heirs, the district court *suo motu* called for and examined the correctness of his action and revised the distribution ordering that if anyone was aggrieved by the decision of the primary court should have appealed otherwise it maintained the primary court's finding that such land belonged to the appellants.

The respondent was aggrieved by that decision hence appealed to the High Court which held that primary courts have no jurisdiction to determine land matters and proceeded to nullify the proceedings and the judgment of the District Court and advised the parties to file their complaints to the land court with jurisdiction to hear and determine the same.

The High Court decision did not auger well to the appellants who are now before the Court having fronted two grounds to challenge it that: -

- "1. That, the High Court grossly erred in fact and law in not holding that the appeal before it filed on 16/1/2017 was time barred.*
- 2. That, the high Court acted illegally in holding that Maji Ya Chai Primary Court had no jurisdiction to entertain the issue of ownership of the 2 ½ acres of land which were being litigated under Probate and Administration Cause No. 41 of 2005."*

To represent the parties before us, Mr. Kelvin Kwagilwa and Ms. Neema Oscar, both learned counsel, appeared for the appellants and Mr. Haruna Msangi, also learned advocate, appeared for the respondent. Counsel for both sides adopted the respective written submissions they had earlier on lodged and were inclined to elaborate them but were fairly brief concentrating much on ground one of appeal.

Like the counsel of the parties, upon our thorough perusal of the record of appeal and, in particular, the proceedings and judgments of the trial Primary Court, District Court and the High Court, we propose to

deal with the first ground only which, we are of the view, will sufficiently dispose of the appeal.

Counsel of both sides are in agreement that the decision (Ruling) of the District Court in Civil Revision No. 22 of 2016 was delivered on 14/12/2016 and the respondent's appeal to the High Court in PC Civil Appeal No. 3 of 2017 was lodged on 16/1/2017 which was beyond thirty (30) days. In view of this fact, it was Mr. Kwagilwa's contention that the appeal was lodged out of the statutory period of thirty (30) days in contravention of the provisions of section 25 (1) (b) of the Magistrates' Court Act, Cap. 11 (the Act) hence it was time barred subject to the decision thereof being rendered a nullity citing the case of **Sofia Mdee vs Andrew Mdee and Three Others**, Civil Appeal No. 5 of 2015 (unreported) to support his position. In further pre-empting the respondent's counsel, Mr. Kwagilwa submitted that an appeal to the High Court from the District Court does not require any document to be annexed to the petition of appeal hence a delayed supply of the proceedings and judgment is no excuse to comply with the time limit set by the law in lodging an appeal. If they were late to lodge an appeal, for whatever reason, the appellants were required to seek and be granted extension of time before lodging it which course the appellants did not

take, he insisted. He accordingly sought indulgency of the Court to find the appellants' appeal to the High Court was time barred and proceed to nullify the High Court judgment and decree and costs of the case be awarded to the appellants.

On his part, Mr. Msangi was seriously opposed to Mr. Kwagilwa's assertion. In his view, the appeal could not be caught under such web as his client was supplied with the necessary appeal documents on 28/12/2016 from which date the time limit for lodging the appeal should be reckoned. Rationalizing his position, he argued that it was not possible for him to prepare the grounds of appeal without such documents. He further argued that there is an automatic exclusion of the time spent before being supplied the documents relying on the provisions of section 19 (2) of the Law of Limitation Act, Cap. 89 (the LLA). For him and for that reason, the case of **Sofia Mdee vs Andrew Mdee and Three Others** (supra) is distinguishable. He was, however, aristocrat to readily concede that section 25 (1) (b) of the Act has no exception and had no any authority to support his contrary view.

In the light of uncontroverted fact that the respondent's appeal to the High Court was lodged beyond thirty (30) days from the date the decision of the District Court was rendered, the issue for our

determination is now narrowed down to only whether the appeal was thereby time barred.

We begin by stating the obvious and outrightly that lodgement of an appeal is not unilaterally done. It is governed by law both procedurally and substantively. The laws prescribe how, where and when appeals should be lodged. Lodgement of an appeal to the High Court from the District Court exercising either its appellate or revisional jurisdiction is not an exception. It is governed by the Act and the Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules, Government Notice No. 312 of 1964 (the Rules) as rightly submitted by the appellants' learned counsel.

The provisions of section 25 of the Act prescribe on how, the place and time within which an appeal from the District Court to the High Court should be lodged. That section stipulates thus:

*"25-(1) Save as hereinafter provided-*

*(a) In proceedings of a criminal nature, any person convicted of an offence or, in any case where a district court confirms the acquittal of any person by a primary court or substitutes an acquittal for a conviction, the complainant or the Director of Public Prosecutions; or*

*(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.*

*(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:*

*Providing that, the Director of Public Prosecutions may file an appeal in the High Court and, where he so files an appeal, he shall give notice thereof to the district court and the district court shall forthwith dispatch the record of proceedings in the primary court and the district court to the High Court.*

*(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."*

Rule 2 of the Rules defines petition thus: -

*"petition of appeal" includes the record of the grounds of appeal where the same have been stated orally and recorded by the District Court under the provisions of paragraph (b) of subsection (4) of section 20 of the Act.*

And Rule 3 of the Rules which deals with applications for leave to appeal out of time, provides: -

*"An application for leave to appeal out of time to a District Court from a decision or order of a Primary Court or to the High Court from a decision or order of a District Court in the exercise of its appellate or revisional jurisdiction shall be in writing, shall set out the reasons why a petition of appeal was not or cannot be filed within thirty days after the date of the decision or order against which it is desired to appeal, and shall be accompanied by the petition of appeal or shall set out the grounds of objection to the decision or order:*

*Provided that where the application is to a District Court, the Court may permit the applicant to state his reasons orally and shall record the same."*



It is discernible that in appeals from the District Court to the High Court in matters originating from Primary Court, like the instant one, an appeal is lodged in the District Court by way of a petition and the District Court is obligated to transmit the record to the High Court. As to compliance to these requirements, the appellants complied fully with and the parties had no qualms about it. The controversy is on the prescribed time within which to lodge the appeal.

In very certain terms, section 25 (1) (b) of the Act, prescribes the time within which such an appeal should be lodged. It is thirty (30) days from the date the decision sought to be impugned was delivered. There is no exception. Instead, for a party who could not manage to lodge an appeal within such time, the provisions of section 25 (1) (b) of the Act and Rule 3 of the Rules come to the rescue as they provide for a remedy that he may apply for leave to the High Court for extension of time to appeal out of time.

In the instant appeal, Mr. Msangi relied on section 19 (2) of the LLA to move the Court to agree with him that it automatically excludes the period of time a party is not served with the appeal documents. Mr. Kwagilwa uncompromisingly resisted the assertion arguing that it is not

a legal requirement that such documents must be annexed to the petition of appeal.

Fortunately, in our determination of the contest, we shall not be plying unguided. In **Sophia Mdee vs Andrew Mdee and Others** (supra), cited by the appellants' learned counsel, the Court lucidly discussed on the issue whether a copy of judgment is an essential document in filling an appeal to the High Court on matters originating from Primary Courts and what is a petition. It having considered the meaning of the term "petition" as defined in Rule 2, 4 (1) and (2) of the Rules, it finally concluded that: -

*"From the foregoing it is clear that attachment of a copy of judgment along with the petition of appeal is not a legal requirement in instituting appeals originating from the Primary Courts."*

The Court went further, with approval, to refer to an observation made earlier in the decision of the High Court in **Gregory Raphael v. Pastrory Rwehabula** [2005] T.L.R. 99 (HC) which lucidly discussed Rule 4 of the Rules and said: -

*"As it can be seen, attachment of a certified copy of judgment is not one of the contents of the petition of appeal as it sued to be in appeals originating from District Courts and Courts of*

*Resident magistrate as is provided under 0.39, rule 1 of the Civil Procedure Code, 1966 which law is not applicable in Primary Courts. Failure to attach memorandum of appeal along with a copy of decree and judgment renders the appeal incompetent. Attachment of copies of decree and judgments is a condition precedent in instituting appeal originating from district courts and courts of resident magistrate”.*

Although the issue under discussion in **Sophia Mdee v. Andrew Mdee and Others** (supra) centred on whether it was a matter of necessity to attach a copy of judgment, we have no scintilla of doubt that the principle applies to all documents. That said, we agree with Mr. Kwagilwa that the delay to be served with what Mr. Msangi termed as the appeal documents, is no reason to divert from the prescribed statutory period of lodging appeals to the High Court from matters arising from the decisions of the Primary Courts. Given the clear provisions of the Act and the Rules as discussed above, time within which to appeal to the High Court is thirty (30) days which time is reckoned from the date the decision of the District Court was delivered and in the event there is a delay, a party has to apply for and be granted extension of time before lodging an appeal.

In fine and for the above reasons, we allow the appeal and hold that the appellants' appeal to the High Court from the District Court decision in Civil Revision No. 22 of 2016 was time barred and as we were invited by Mr. Kwagilwa, we hereby quash the High Court decision in PC Civil Appeal No. 3 of 2017 and set aside the decree thereof. However, as the parties are relatives, to maintain good relationship, we order each party to bear its own costs.

**DATED** at **ARUSHA** this 23<sup>rd</sup> day of February, 2024.

S. A. LILA

**JUSTICE OF APPEAL**

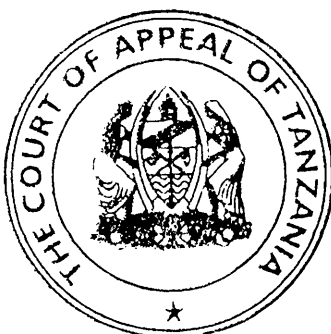
Z. N. GALEBA

**JUSTICE OF APPEAL**

A. Z. MGEYEKWA

**JUSTICE OF APPEAL**

The Judgment delivered this 23<sup>rd</sup> day of February, 2024 in the presence of Ms. Neema Oscar, learned counsel for the Appellants and Mr. Harun Iddi Msangi, learned counsel for the Respondent, is hereby certified as a true copy of the original.



  
D. R. LYIMO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**