

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

PC CIVIL APPEAL NO. 51 OF 2022

(C/F Civil Appeal No. 22 of 2022 and Shauri la Madai No. 88/2020 of Maji ya Chai
Primary Court)

ACTIVE FEET ADVENTURE.....APPELLANT

VERSUS

DULUTI FOREST CLUB.....RESPONDENT

JUDGMENT

02/05/2023 & 14/06/2023

MWASEBA, J.

The appellant herein, filed a suit against the respondent at Maji ya Chai Primary Court claiming for Tshs. 12,000,000/= as a specific damage for Canoe "Mitumbwi" and general damages of Tshs. 22,500,000/= for the loss they incurred. Based on the evidence submitted before the trial court, it was decided that the appellant failed to prove her case on the balance of probabilities and dismissed the claim with costs. Aggrieved by the trial court's decision the appellant filed an application to the district court seeking for extension of time to file an appeal but her application was dismissed for want of merit, hence this appeal.



This appeal was filed based on four grounds as follows:

- 1. That, the Arumeru District Court erred in fact and law by failing to acknowledge the weight of the prayers by the appellant that would pave way to right of the appellants application.*
- 2. That, the lower court erred in fact and law by failing to adduce the oral and documentary evidence and hence arrived at a wrong decision.*
- 3. That, the trial Magistrate erred in fact by not reviewing the new fact of evidence that would pave way for the said application for the appellant.*
- 4. That, the lower court erred in fact by delivering a biased judgment against the appellant and hence arrived at a wrong ruling.*

During the hearing of the appeal, both the appellant and respondent appeared in person, unrepresented. They both consented to proceed with the hearing by way of written submission.

Submitting in support of appeal, on the 1st ground of appeal the appellant stated that he was late to file his appeal at the District Court as he was trying to file a review and that was a technical delay. He



added that the District Court ought to have enlarged the time and allow the appeal to be filed so that the matter can be concluded on its merit.

Responding to this ground, the respondent submitted that at the District Court their prayer was dismissed since Chamber summons and their Affidavit supporting the application had two different prayers. She submitted further that while in their Chamber Summons, they were praying for the time to be extended, in their affidavit under paragraph 8, 9, 10 they are seeking for review of the decision of Maji ya Chai Primary Court. Therefore, this ground has no merit as the appellant was not aware of what he was praying before the court.

On the 2nd and 3rd grounds of appeal, the appellant submitted that when the Civil Case No. 88 of 2020 was concluded he obtained a new piece of evidence which in his opinion would change the entire decision of the trial court. That the said evidence clearly indicated that the appellant was a legal owner of the canoes which were in dispute. For that reasons he tried to file a review, but he was out of time. He insisted that his delay was not intentional given the fact that he was seeking justice in relation to the ownership of his canoes which were licenced by law. It was his further submission that the District Court could have reviewed

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his documents and allowed him to file an appeal instead of throwing him out.

The respondent's reply to these grounds were that, as the applicant was not aware of what they were seeking for, it was not possible for their documentary evidence to give another decision apart from what was given by the trial court.

On the last ground of appeal, the appellant submitted that the lower court was bias hence it reached to a wrong ruling. Had the trial magistrate reviewed the judgment which they intended to appeal against, it would concur with the appellant that there were irregularities in the original judgment that did not pronounce the original owner of water vessels in dispute. He prayed for the appeal to be allowed.

Responding to this ground, the respondent submitted that as the application filed by the appellant at the District Court were tainted with irregularities that's why the same was dismissed. The application was not proper before the District Court that's why the court did not continue with its determination. Consequently, the decision delivered was proper and not biased as alleged. She prayed for the appeal to be dismissed with costs.



Having heard the rival submissions from both parties, and after going through the grounds of appeal submitted by the appellant, the issue for determination is whether the District Court was justifiable in dismissing the application of the appellant filed before it.

Upon revising the record and ruling this court noted that the district court magistrate after reading the appellant's affidavit, she found that the same was not complimenting the appellant's prayers sought in the chamber summons. She further observed that the principles for granting extension of time as stipulated in the case of **Lyamuya Construction Company LTD vs Board of registered Trustee of Young Women's Christian Association**, No. 2 of 2010, CAT at Arusha were not featured in his affidavit. Hence the court dismissed the appellant's application for the following reason:

"Failure to abide with those conditions the court cannot exercise its discretion since the law requires the discretion to be exercised judiciously. I am also in agreement with the argument of the Respondent that ignorance of the procedural law is not sufficient reasons for the court to extend time as it was held in Ngao Godwin Rosero vs Julisu Mwarabu, Civil Application No. 10 of 2015 (Unreported)...."

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The said procedural irregularity noted by the District Court after being raised by the respondent were that, in their chamber summons the appellant prayed for the time to be extended so that they can file their appeal out of the prescribed time. However, under paragraph 8,9,10 of their affidavit Supporting the application, the appellant prayed for the court to extend time to file a review and not an appeal. So, the appellant was not certain as to his prayers.

Regarding the reasons justifying his delay to appeal or file review which ever he wished to, it was revealed in his affidavit that the judgment which was subject to be challenged at the district court was delivered before Maji ya Chai Primary Court on 20/08/2021. Thereafter, on 7/09/2021 they wrote a letter requesting to be supplied with a copy of judgment. However, the said letter was not attached to the affidavit. The record shows that the application for extension of time was filed at the district court on 5/11/2021. He did not state as to when he received the copy of judgment. So, since 20/08/2021 to 5/11/2021 it's more that two months. The appellant was reluctant to pursue his right at the district court. I join hands with the district court magistrate that the appellant did not show sufficient reason to be granted extension of time. He was supposed to account for each day of his delay. This was stated in the

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case of **Bushfire Hassan vs Latina Lucia Masaya**, Civil Application
No. 3 of 2007 (CAT-Unreported) that: -

"Delay, even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken. "

In the case at hand, apart from failure to account for days of delay the appellant was not sure as to whether he wanted to file an appeal or a review, thus the court could not exercise its discretion to grant the application. For that reasons this court finds no need to fault the decision of the district court of dismissing the appellant's application for extension of time.

Having discussed as herein above, this appeal is dismissed entirely, the district Court's decision is upheld. The appellant shall bear the costs of this appeal.

It is so ordered.

DATED at **ARUSHA** this 14th June 2023.




N.R. MWASEBA
JUDGE