

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

DC CIVIL APPEAL NO. 14 OF 2019

SWEETBERT BISHANGA.....1ST APPELLANT

PAITON KAMNAMA.....2ND APPELLANT

VERSUS

SELESTIN MTUI.....RESPONDENT

JUDGMENT

6 July & 12 August, 2021

DYANSOBERA, J.:

This is an appeal from the ruling and order of the District Court of Nachingwea in Civil Appeal No. 3 of 2018 in which the appellant's appeal was dismissed after it was found to be time barred. The petition of appeal filed by the appellants contains two grounds of appeal, to wit:-

1. That the court erred in law and fact in dismissing the appeal without considering the fact that there was a point of law to be determined, as to whether the primary court was legally right to hear and determine the case which already determined by

the district court, and the same pending in the High Court at the stage of appeal, appealed against by the respondent.

2. That the court erred in law and fact in dismissing the appeal instead of striking out.

With those grounds, the appellants are praying this court to allow the appeal and quash the ruling and decision of the district court and order the appeal to be heard on merits to determine the illegality raised by the appellants in their grounds of appeal at the district court.

The background of the matter can be briefly stated. In Civil Case No. 13 of 2018 suit filed before the Primary Court of Nachingwea District at Nachingwea Urban, the respondent was awarded Tshs. 5, 180,000/= to be paid by the appellants. The decision of the trial court was handed down on 11th day of November, 2018. On 21st day of November, 2019, the appellants filed their appeal to the District Court seeking to challenge the said decision. The appeal was not heard on merit. It was dismissed on a preliminary objection for being time barred. In explaining the delay, the appellants argued that they received certified copies of judgment on 5th day of November, 2019 and therefore, their appeal was within time.

In dismissing the appeal, the District Court was satisfied that the reason for the delay was not plausible as the attachment of a copy of judgment along with the petition of appeal was not a legal requirement to institute appeals originating from primary courts. Reliance was made on the case of **Sophia Mdee v. Andrew Mdee and 30 others**, Civil Appeal No. 5 of 2015.

At the hearing of this appeal, the respondent as well as the 2nd appellant appeared in person. The 1st respondent made no appearance.

Arguing in support of 1st ground of appeal, the 2nd respondent submitted that the case was heard in the primary court while the case had been tried in the district court and then went up to the High Court on appeal as such it was res judicata and the primary court had no jurisdiction. Further that there was a settlement deed.

With regard to the 2nd ground of appeal, the 2nd appellant contended that although he was late in appealing, there were legal points to be determined and that since the case was not heard, it was to wrong on part of the district court to dismiss it. It ought to have been struck out.

In rebuttal, the respondent pointed out that there was nothing showing that the case before the primary court was *res judicata* as there were two different cases. The respondent explained that the impugned case was Civil Appeal No. 13 of 2018 which was before the primary court and was in respect of money for the licence while the other case was Civil Appeal No. 3 of 2015 which was about timbers.

In his rejoinder, the 2nd appellant stated that according to the records in the in the district court there were things which had been agreed upon in the settlement deed and that both cases owe the same origin that is the settlement deed. He argued that there were points of law which touched both the jurisdiction of the court and the settlement deed and that these had to be taken into account by the district court before it had resorted to dismissing the appeal; otherwise, the matter had to be struck out and not dismissed, the 2nd appellant insisted.

Having gone through the lower court records, the grounds of appeal and the submissions of the 2nd appellant and the respondent, I am in no doubt that the appellant's appeal to the district court which was dismissed on 23rd day of October, 2019 was time barred. It was not disputed that the judgment of the primary court in Civil Case No. 13 of 2018 against which the appellants were appealing to the district court was delivered on

11.11.2018. The appellants' appeal to the district court was filed on 21.11.2019. Clearly, this was beyond the limitation time of thirty days prescribed under Section 25 (1) (b) of the Magistrates' Courts Act [Cap. 11 R.E.2019]. There was no extension of time granted by the court. The argument by the 2nd appellant that they failed to appeal in time because they delayed to get a copy of judgment was rightly rejected by the district court as that was not a legal requirement institute appeals originating from primary court. This legal position was well settled by the Court of Appeal in the case of **Sophia Mdee v. Andrew Mdee and 30 others**, Civil Appeal No. 5 of 2015, the Court of Appeal of Tanzania set clearly the position of appealing from the Primary Court to the District Court in the following terms:

'Attachment of copy of judgment along with the petition of appeal is not a legal requirement to institute appeals originating from primary court'.

This means that the delay in obtaining a certified copy of judgment was not a sufficient cause for the delay. Besides, that argument could have been properly made by the appellants and entertained by the court only in an application for extension of time and not in an appeal which has been time barred.

It is trite that the law of limitation is there purposely to control the proceedings as was well illustrated by this court (Katiti, J as he then was) in the case of **Tanzania Breweries Ltd v. Robert Chacha**, HC Civil Revision No. 34 of 1998 at Dar es Salaam (unreported) in which the court applied the principles laid down in the English case of **R.B Policies at**

Lloyds v. Butter (1950) 1 KB 76 at 81 or (1949) All ER 226 at p. 230 thus:

“Statutes of limitation are inter alia that long and dormant claims have more of cruelty than justice in them and the person with good cause of action should pursue it with reasonable diligence’.

The first ground of appeal falls away.

With respect to the 2nd ground of appeal, it is my finding also that this ground has no merit. Since the question of limitation touches on the jurisdiction of the court, the learned Resident Magistrate cannot be faulted in his decision as he had no alternative other than dismissing the appeal filed outside the prescribed time. It was not heard on merit but time limitation is a jurisdictional issue and when it is proved that an action has been time barred, the only option for the court is not to strike it out but to dismiss it.

That was what the district court did.

For the reasons stated, the appeal fails and is dismissed with no order as to costs.



A handwritten signature in blue ink, appearing to read 'W.P. Dyansobera'.

W.P. Dyansobera

Judge

12. 8.2021

This judgment is delivered under my hand and the seal of this Court on this 12th day of August, 2021 in the presence of the 2nd appellant and the respondent but in the absence of the 1st appellant.

Rights of appeal to the Court of Appeal of Tanzania explained.




W.P. Dyansobera

Judge