

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MAKAME, J.A., MNZAVAS, J.A., And LUBUVA, J.A.)

CIVIL APPLICATION NO. 27 OF 1995

BETWEEN

NALOGWA ZAKARIA. APPLICANT

AND

WANDOA MSUNZA. RESPONDENT

(Application for an order that the
order of the High Court judge be set
aside on the ground that the Judge
erred in his decision of the High
Court of Tanzania at Dar es Salaam)

(Maina, J.)

dated the 30th day of May, 1995

in

(PC) Civil Appeal No. 161 of 1992

R U L I N G

LUBUVA, J.A.:

Before the Primary Court at Manzese in Dar es Salaam, the respondent had sued the applicant, her husband in Civil Case No. 85 of 1991 in which the subject matter was a house, allegedly a matrimonial property. Though the primary court had decided that the house was a matrimonial house, the applicant and the respondent were ordered to pay a compensation of Shs. 7,189,000/= to one Faruel Nashokigwa before they could take possession of the house. The respondent appealed to the District Court where the appeal was dismissed. On a second appeal to the High Court, the appeal was allowed wherein it was held that the respondent had a right to her share in the house, it being a matrimonial house and that it was wrong to award compensation to DW.2 who was not a party to the suit. The decision of the High Court was

delivered on 30.6.1994 and the notice of appeal was filed on 20.6.1994. The applicant, the husband of the respondent was unhappy with that decision. He filed an application seeking leave of the High Court to appeal to this Court on 29.7.1994. Dismissing the application for leave, the High Court (Maina, J.) held that the application which in terms of rule 43(a) of the Court's Rules, 1979, should have been filed within 14 days of the date of the decision was time-barred. From that decision the applicant has come to this Court.

In what appears to us a rather novel style, this application was filed by Dr. Saffari, learned Counsel. As shown in the notice of motion, the application was purportedly made under rules 45 and 75. In that motion, a Judge of this Court was to be moved for an order setting aside "the order of the High Court refusing leave to appeal on the ground that the judge erred in his decision". The application was supported by the affidavit of the applicant, Nalogwa Zakaria. In the affidavit it is stated:

1. That I was not represented in the High Court and was ignorant of the time fixed by law to file petition of appeal to the Court of Appeal.
2. That I believe that the case raises a fundamental issue of law for decision of the Court.

We would first deal with the manner in which this application has been processed. As already pointed out, in the notice of motion, it is clearly indicated that the order sought was seeking to set aside the High Court order refusing to grant leave to appeal.

This seems to us rather novel because what the application intended to achieve was to obtain from this Court leave to appeal against the High Court decision or to have an extension of time in which to file an application for leave to appeal. This would be in accordance with the provisions of Section 5 (1)(c) of the Appellate Jurisdiction Act, 1979 as the matter originates from the primary court. It is for that reason that it appears to us that the relief sought was couched in such a manner that it does not indicate clearly what it seeks to achieve.

The next issue is whether the application is properly before us. Although in the notice of motion it is indicated that the application was made under rules 45 and 75 of the Court's rules, 1979, it is our understanding that the application was based on the provisions of rule 43(b) of the Court's rules. The reason is that this matter arises from the decision of the High Court in which the application for leave to appeal to this Court was dismissed. With the dismissal of that application, the applicant has come to us in terms of rule 43(b) which allows a party whose application for leave to appeal has been refused by the High Court to seek leave from the Court. This is what the applicant has done. In that case, it being an application of this nature, it is our settled view that as it is the case with such civil applications seeking for leave of the Court after refusal by the High Court, the matter should have come to a single judge of the Court and not before a bench of three judges of this Court.

That notwithstanding, we would carry the matter further on its merits. Dismissing the application for leave to appeal, the learned judge held that the application having been filed

after the expiry of the prescribed period and as there was no application for the extension of time filed, the application was time-barred. At the hearing of this application Mr. Mwakajinga learned Counsel for the respondent who had also represented the respondent before the High Court submitted that the application was devoid of any merit. He stated that the application was filed out of time and that the appellant did not follow the advice of the Chief Justice to apply for an extension of time in which to file the application for leave to appeal. As for the applicant's claim that he did not know the time fixed by the rules for applying for leave to appeal, Mr. Mwakajinga charged that ignorance of the law is no defence. He pressed for the dismissal of the application.

As already indicated, the applicant's ground for the application was that he wanted the appeal to be heard so that justice could be done in the case as he was not represented before the High Court. He strongly urged that the learned judge had erred in dismissing the application. Appearing in person before us at the hearing of this application, the applicant repeated what he had stated in the affidavit, that he did not know the time fixed by the rules for filing applications and appeals to the Court.

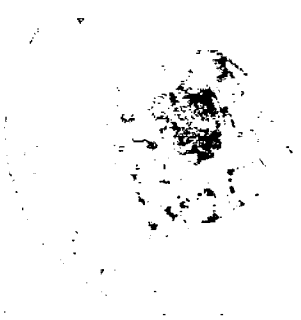
As seen from the ruling of the High Court, it is common ground that the judgment of the High Court was delivered on 17.6.1994. The application for leave to appeal was lodged before the High Court on 29.7.1994. In terms of rule 43(a) of the Court's rules the application for leave to appeal is to be filed within fourteen days from the date of the decision. The application for leave was therefore, as correctly held by the learned judge

time barred. Furthermore, with the prescribed time for applying for leave having expired and there was no application filed for extension of time in which to file the application for leave to appeal, we can see no ground for faulting the learned judge in his decision to dismiss the application. It was hopelessly out of time and there was nothing that the learned judge could do in order to salvage the situation. We are also satisfied that no point of law was involved in this matter worth the consideration of this Court.

The applicant's claim that he was ignorant of the time fixed by the rules for the processing of petitions and appeals to the Court is of no avail as it is common knowledge that ignorance of the law is no defence at all in law. Rules of the Court are there to regulate the processing of appeals etc, they should be followed vigorously. Otherwise, non-compliance with these rules on grounds of ignorance of the rules would impede the speedy and smooth running of the Court's business. There would be no end to litigation. In the circumstances of this case, we are satisfied that there are no grounds for the applicant's complaint that justice was not done in the case. It is to be observed that the applicant and the respondent are still husband and wife. The decision by the High Court which is complained of did not deprive the applicant of a share in the house. Rather, it was decided that the house was a matrimonial house in which both the applicant and the respondent had a share. As none of them was deprived of a share in the house, a fair balance of justice, was, in the circumstances, maintained.

Consequently, we are satisfied that this application has no merit at all. It is dismissed with costs.

DATED AT DAR ES SALAAM THIS 24th DAY OF May, 1996.



L.M. MAKAME
JUSTICE OF APPEAL

N.S. MNZAVAS
JUSTICE OF APPEAL

D.Z. LUBUVA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.



(M.S. SHANGALI)
DEPUTY REGISTRAR