

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

**CIVIL APPLICATION NO. 5 OF 2009**

**GEORGE NGAJA ..... APPLICANT  
VERSUS**

**AUCKLAND MAGWIYA ..... RESPONDENT**

**Application for Extension of Time to file Notice of Motion  
From the decision of the High Court of Tanzania  
at Tanga)**

**(Longway, J.)**

**dated the 11<sup>th</sup> day of September, 2001  
in  
Civil Appeal No. 30 of 2000**

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**RULING**

**12 & 17 March, 2010**

**MUNUO, J.A.:**

Mr. Mwambene, learned advocate for the applicant, brought a Notice of Motion under section 5 (2) (c) of the Appellate Jurisdiction Act, 1979 CAP.141 R.E. 2002, seeking extension of time within which the applicant can file a Notice of Motion for an application to certify that a point of law is involved in the intended appeal to this Court. The respondent, Auckland Mangwiya, appeared in person.

The applicant, George Ngaja deponed to an affidavit which his learned advocate adopted fully in support of the application. The

applicant was dissatisfied with the decision of Longway, J. as she then was, in (PC) Civil Appeal No. 30 of 2000 in the High Court of Tanzania at Tanga, which appeal was determined on the 11<sup>th</sup> September, 2001. The applicant duly filed a Notice of Appeal to challenge the decision of the High Court. He also instituted Civil Application No. 73 of 2001 as reflected at paragraph six of the affidavit in support of this application. The said application was rejected for non disclosure of the point of law to be determined by the Court in the intended third appeal.

After the application for leave to appeal was refused by the High Court on the 2<sup>nd</sup> day of October, 2003 by Mkwawa, J., the applicant did not quit the legal battle. As reflected in paragraph 8 of the affidavit in support of the application, the applicant sought leave to appeal vide Civil Application No. 2 of 2004 in this Court but the same was later withdrawn under Rule 3(2)(a) of the Court Rules, 1979. That was on the 20<sup>th</sup> June, 2008. Subsequently, the applicant, as stated at paragraph 10 of his affidavit, applied for extension of time in Miscellaneous Civil Application No. 19 of 2008 in the High Court of Tanzania at Tanga, before Teemba, J. The learned judge dismissed the application on the ground that Mkwawa, J. had considered and

rejected the prayer for a certificate on a point of law in Miscellaneous Civil Application No. 73 of 2001 thus:

*--- The question that now poses for consideration and decision by this court at this juncture is, whether or not, in the light of that background, the applicant has raised points of law which have to be resolved by our Court of Appeal.*

*In other words, are there any points of law that require to be certified by this court? I hasten to answer in the negative. It is on the basis of the foregoing that I am now impelled to refuse to grant this application.*

The applicant was not satisfied with the refusal of the High Court. He then filed the present application seeking extension of time to apply for a certificate.

This is an old matter arising from the decision of the High Court in (PC) Civil Appeal No. 30 of 2000 which was passed on the 11<sup>th</sup> September, 2001. An application for leave to appeal to this Court was withdrawn before Mroso, J.A. as he then was to enable the applicant

to combine the application for leave to appeal and the prayer for a certificate on a point of law. The application had been filed and determined in the High Court by Mkwawa, J. so Teemba, J. rightly dismissed the subsequent application which gave rise to this application.

In view of the above I find no ground for extending the sought period. I would have been persuaded otherwise if the points of law for determination by the Court had been disclosed by the applicant.

Under the circumstances, the application is dismissed with costs.

DATED at TANGA this 13<sup>th</sup> day of March, 2010.

E. N. MUNUO  
**JUSTICE OF APPEAL**

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



  
(N. N. CHUSI)  
**DEPUTY REGISTRAR**