IN THE COURT OF APPEAL OF TANZANIA

AT ARUSHA

CIVIL APPLICATION NO. 9 OF 2015

HAMISI JOHN ..... APPLICANT

VERSUS

HALFAN JANDU MKUMBO..... RESPONDENT

(Appeal from the Judgment and Orders by the High Court of Tanzania at Arusha)

(Sambo, J.)

Dated 16th day of August, 2011
In
Civil Appeal No. No. 6 of 2011

RULING

2nd & 12th October, 2015

MWARIJA, J.A.

In this application, the applicant has prayed for two orders; an order granting him extension of time to institute in the High Court, an application for a certificate of point of law and an order staying execution of a decree pending hearing and determination of his intended appeal. According to his affidavit, the applicant intends to appeal against the decision of the High Court dated 29/7/2011 in PC Civil Appeal No. 6 of 2011. The application has been brought under Rules 10, 11(2) (b) and 48(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules).

At the hearing of the application, the applicant appeared in person and unrepresented by a counsel. On his part, the respondent did not enter appearance. Since however, he was duly served, hearing proceeded in his absence under Rule 63(2) of the Rules.

Submitting in support of his application, the applicant did not have much to argue. He repeated the contents of his affidavit. He prayed that the application for a certificate that his case is a fit case for appeal be granted so that he can institute his intended appeal in this court. He said that he came to this court because his previous application to the High Court was struck out. With regard to the second limb of his application, the prayer for stay of execution of the decree against which he intends to appeal, the applicant admitted that he improperly combined it with his first prayer. He conceded that the application was brought in an omni-bus form.

Indeed, the effect of combining the two prayers rendered the application incompetent. Although it is within the power of a single Justice to entertain an application for extension of time, the jurisdiction of entertaining an application for stay of execution is vested in the full Court. Obviously therefore, combining of the two prayers rendered the application defective. In the case of **Babie Hamad Khalid v. Mohamed**

Enterprises (T) Ltd and 2 others, Civil Application No. 6 of 2011, the applicant combined an application for extension of time to institute a notice of appeal and an application for stay of execution. The Court observed that combining of the two applications, one of which is within the jurisdiction of a single Justice and the other which is within the jurisdiction of three Justices, rendered the application incompetent.

There is yet another irregularity in this application. Under s. 11 (1) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002, this Court and the High Court have concurrent jurisdiction to entertain an application for extension of time to institute an application for certificates of point of law. The section provides as follows:

> *"11-(1) Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal,*

notwithstanding that the time for giving the notice or making the application has already expired".

Under rule 47 of the Rules, such an application must first be filed in the High Court. The Rule states as follows:

"47.- Whenever application may be made either to the Court or to the High Court, it shall in the first instance be made to the High Court or tribunal as the case may be, but in any criminal matter the Court may in its discretion, on application or of its own motion give leave to appeal or extend the time for the doing of any act, notwithstanding the fact that no application has been made to the High Court."

According to the applicant, he brought this application after his first application to the High Court was struck out for having been preferred under a repealed law. The fact that the application was struck out did not entitle him to come to this Court. Since the application was merely struck

out not dismissed, he could go back to the High Court and subject to the law make a fresh application.

On the basis of the reasons stated above, this application is found to be incompetent. It is thus hereby struck out. Since the respondent did not appear I make no order as to costs.

DATED at **ARUSHA** this 8th day of October, 2015.

A. G. MWARIJA
JUSTICE OF APPEAL

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

E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL