

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
CIVIL APPLICATION NO. 104 OF 2016

WILLIAM F. MUZE APPLICANT

VERSUS

JANE TEDY MAYEMBA RESPONDENT

(Application for extension of time to file a Notice of Appeal and extension of time to file an application for certification of points of law to be ordered by the Court of Appeal against the judgment and decree of the High Court of Tanzania, at Dar es Salaam.)

(Rumanyika, J.)

dated the 28th day of July, 2015
in

Misc. Land Application No. 557 of 2015

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RULING

2nd & 14th December, 2016

LUANDA, J.A.:

The applicant, through Mr. Samson Mbamba learned counsel, has filed a notice of motion for an order of extension of time to file a notice of appeal out of time and "to file an application for certification of a point of law to be determined by the Court of Appeal against the judgment and decree of the Hon. Mr. Justice Rumanyika dated 28th July, 2015 in Misc. Land Application No. 557 of 2015." The application has been made under Rules 10 and 48 (1) (2) of the Court of Appeal Rules, 2009 (the Rules) and supported by an affidavit.

The historical background giving rise to this application is to this effect. In Kunduchi Ward Tribunal, the respondent successfully sued the applicant for recovery of a piece of land. The case proceeded ex parte because the applicant failed to enter appearance, though served. It would appear when the respondent was in the process of executing the decree or order, the applicant emerged and filed an appeal in the Kinondoni District Land and Housing Tribunal at Magomeni (the Tribunal). However, the appeal was later withdrawn. Instead, the applicant filed a chamber application under S. 20 (2) of the Land Dispute Court Act, Cap 216 R.E. 2002 and O. XXXIX, R. 5 of the Civil Procedure Code, Cap 33 R.E. 2002 seeking for the following orders:-

- (i) Execution of the decree of Kunduchi Ward Tribunal be stayed.
- (ii) The Tribunal be pleased to allow the applicant to prefer an appeal out of time.
- (iii) Costs.
- (iv) Any other reliefs.

As regards allowing the applicant to file an appeal out of the time, the Tribunal refused to grant the prayer. Turning to an order of stay of execution, the Tribunal found out that it was not properly moved by failure

to cite sub-rule of rule 5 of O. XXXIX of the CPC. The entire application was struck out with costs.

The applicant was aggrieved by the decision, he appealed to the High Court (Land Division). The High Court (Mwaikugile, J.) held that the Chairman of the Tribunal had erred. But as the order of the Chairman of the Tribunal is not appealable, Mwikugile, J. reverse that decision and said the proper order it ought to have been made was to dismiss and not to strike it out. He substituted that with a dismissal order.

The applicant then filed an appeal in the High Court (Land Division). When the appeal was called on for hearing in the High Court, Mr. Mbamba prayed for an adjournment so as to rectify some defects in a drawn order. Rumanyika, J. was not prepared to grant the prayer. The appeal was taken to have been withdrawn. The decision was handed down on 28/7/2015.

It would appear the applicant did not file a notice of appeal in time i.e. within 30 days after the decision. He accordingly sought an extension of time to file the same out of time under S. 11 (1) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 and extension of time for the applicant to file an application for a certification on a point of law.

Mkuye, J. found out that the application was devoid of merits. The decision of Mkuye, J. was handed down on 31/3/2016. Dissatisfied, the applicant still intends to challenge that decision. So, on 14/4/2016 the applicant has filed this application.

When the application was called on for hearing, the Court wished to satisfy itself first as to whether really the applicant was late to file the application of notice of appeal in the Court. I posed that question because the application for extension of time was filed on 14/4/2016; whereas the decision of Mkuye, J. was handed down on 31/3/2016. By simple arithmetic the application was filed on the 13th day after Mkuye, J. has handed down her decision.

Mr. Mbamba was of the view that the application of this nature ought to have been made within 14 days after the refusal by the High Court. He got inspiration from Rule 45 (a) of the Rules that when leave is refused by the High Court, the aggrieved may seek leave in this Court within 14 days after that refusal.

Assuming that it is 14 days after refusal, was the application for extension of time filed beyond that period?

As said earlier on the application was filed on the 13th day after the Ruling of Mkuye, J. on 31/3/2016. And in terms of Rule 8 (a) of the Rules,

time starts to run from 1/4/2016. From that day up to 14/4/2016 is a period of 13 days. The applicant was not late to file his application if we go along with Mr. Mbamba's contention. And Mr. Mbamba conceded that much that he was not late at all.

The respondent who appeared in person and so unrepresented had nothing to contribute to the legal point raised.

From the foregoing it is clear that the application for extension of time was prematurely made. As to extension of time to file an application for certification of a point of law; I have the following to say. The application to certify a point of law is the domain of the High Court and not this Court. The same is misconceived.

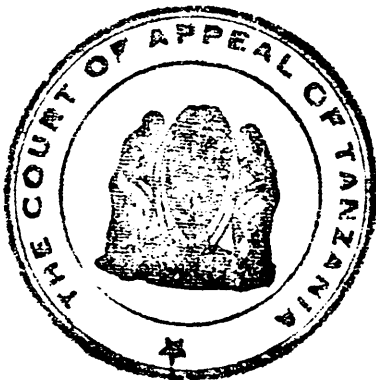
In fine, I dismissed the application with costs to the respondent.


It is so ordered.

DATED at DAR ES SALAAM this 8th day of December, 2016.

B. M. LUANDA
JUSTICE OF APPEAL

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




E. F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL