

IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

CIVIL APPLICATION NO. 8 OF 2015

SAMWELI SICHONE..... APPLICANT

VERSUS

BULEBE HAMISI RESPONDENT

**(Application for Extension of time from the Decision of the High Court of
Tanzania at Mbeya)**

(Karua, J.)

Dated the 23rd day of August, 2013

in

Misc. Civil Application No. 36 of 2011

.....

RULING

13th & 20th April, 2016

MUGASHA, J. A.:

This is an application for extension of time to file an application for revision by notice of motion brought under Rule 10 of the Court of Appeal Rules, (the Rules). The ground canvassed by the applicant in the notice of motion is as follows:-

"the above named applicant will move the court for an order of extension to enable the applicant file an application for Revision on the ground that there is a point of law for the determination of the Court and for an order of costs incidental to this application."

The application has been challenged through the affidavit in reply of **BULEBE HAMISI**, the respondent. To buttress the notice of motion, the applicant has filed written submissions as per requirements of rule 106(1) of the Rules.

A brief background to this application as gathered from the affidavit is as follows. Parties to this application were parties in Civil Case 63 of 2009 before the Primary Court of Uyole whereby the respondent successfully sued the applicant for adultery and claimed damages of Tshs. 10,000,000/=.

Aggrieved, the applicant appealed to the District Court of Mbeya where the proceedings of the Primary Court were annulled. The respondent appealed to the High Court which overturned the decision of the District Court and ordered the respondent to be paid compensation at a reduced sum of Tshs. 5,000,000/=. This made the applicant to lodge an application for review on ground that there was an error apparent on the face of record involving the jurisdiction of Primary Court to entertain a dispute involving a marriage celebrated under civil rites.

At the hearing of the application, the applicant was represented by Ms. Mgaya, learned counsel and the respondent appeared in person, unrepresented.

The applicant submitted that the delay to file revision was occasioned by the delayed in the supply of the decision of the High Court sought on revision despite dully requesting for the same. It was further submitted that, the intended revision is pursued because Karua, J. did not determine the application for Review and instead observed that the matter be referred to the Court. However, Ms. Mgaya, learned counsel pointed out that, she followed up the matter and found that, the matter was not yet referred to the Court as ordered by Karua, J.

On the other hand, the respondent challenged the application arguing that, the applicant ought to have appealed against the decision of Karua, J. because the revisional jurisdiction is not an alternative to appellate jurisdiction. He also pointed out that, the Notice of Motion is incurably defective for indicating the wrong date (23.8.2013 instead of 13.11.2011) and misspelt the name of

presiding Judge in the impugned ruling. (Kalua, J. instead of Karua, J.) He also pointed out that the application is time barred.

In her submission Ms. Mgaya rectified the errors pointed out by the respondent on the name of the Judge and the date of the impugned Ruling.

I do not agree with the respondent that the Notice of motion is not competent. The errors pointed out are not fatal in the light of what was determined by the Court in **THE PRINCIPAL SECRETARY , MINISTRY OF DEFENCE AND NATIONAL SERVICE VS DEVRAM VALAMBHIA (1992) TLR 387**, that:

"A notice of motion and the accompanying affidavit are in very nature of things complementary to each other, and it would be wrong and indeed unrealistic to look at them in isolation. The proper thing to do is to look at both of them and if on the basis of that it is clear what relief is being sought then the court should consider and determine the matter regard being

had to the objection if any, raised by the opposite party”

In the matter at hand, since the impugned Ruling by Karua, J. dated 13.11.2013 is annexed to the affidavit, in terms of the stated principle of complementarity, the correct date and name of the Judge can be gathered in the Ruling which is annexed to the applicant’s affidavit which renders the notice of motion competent.

In an application for extension of time, where the applicant has demonstrated good cause, the Court is warranted to exercise judicial discretion under rule 10 which states as follows:

*“The Court may, **upon good cause shown,** extend the time limited by these Rules or by any decision of the High Court or tribunal, **for the doing of any act authorized or required by these Rules,** whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended.”*

[Emphasis supplied].

In HENRY MUYAGA vs. TTCL, Application No. 8 of 2011
(unreported) the Court interpreted judicial discretion among other things, as follows:-

"The discretion of the Court to extend time under rule 10 is unfettered, but it has also been held that, in considering an application under the rule, the courts may take into consideration, such factors as, the length of delay, the reason for the delay, the chance of success of the intended appeal, and the degree of prejudice that the respondent may suffer if the application is not granted."

In TANGA CEMENT COMPANY LIMITED v JUMANNE D. MASSANGA AND AMOS A. MWALWANDA, CIVIL APPLICATION NO. 6 OF 2001, NSEKELA, JA. Said:

"what amounts to sufficient cause has not been defined. From decided cases a number of factor have to be taken into account including whether or not the application has been brought promptly, the absence of any valid explanation for delay, lack of diligence on the part of the applicant."

Counsel have taken different positions as to whether the applicant has demonstrated good cause to be granted extension of time. The applicant argues that, the delay to be supplied with the impugned Ruling of the High Court not forwarding the matter to the Court as determined by Karua, J. is what made the applicant delay the revision. According to the respondent, he contends the application improper as the applicant ought to have pursued an appeal.

The issue for determination is whether the applicant has paraded good cause warranting the extension. As gathered from the applicant's affidavit and submissions, the purported decision of Karua, J. sought for the intended revision was delivered on 13th November, 2013 as follows:

"With respect, there is merit in Ms. Mgaya's assertion. But do I have powers to quashed the proceedings of my colleague? Not at all. I have no such powers. The best track to take is to refer these proceedings to the attention of the highest court of land for consideration"

On 20/11/2013 applicant applied to be supplied with a copy pursuant to a letter **REF .MLM/ADV/CC/2013/43**. However, the applicant managed to obtain the requisite copy on 16/4/2014 in terms of Exchequer Receipt 50341320 annexed to applicant's affidavit.

The respondent has not seriously contested the delayed supply of the impugned Ruling to the applicant. Since when the applicant obtained the copy of the impugned Ruling, the applicant initially sought an extension in Civil Application 2 of 2014 which was timely filed but withdrawn on 21/8/2015 with leave to refile. Thereafter, the applicant lodged this application on 9/10/2015. The delay questioned by the respondent is possibly the expiry of fifty (50) days after the withdrawal of the initial application. In my considered view, this is what made the applicant to seek extension demonstrates applicant's concerted efforts of the applicant to pursue the intended revision whereby Karua, J. did not conclusively determine the application for Review.

The objection raised by the respondent that, the applicant ought to have appealed because revisional jurisdiction is not an

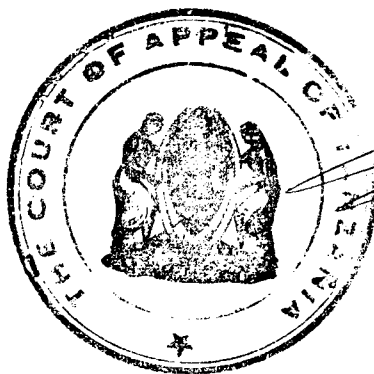
alternative to appellate jurisdiction, is in my view prematurely raised because this is an application for extension of time to apply for a revision. As such, the respondent's concern can be raised and properly be addressed in the respective application for revision.

In view of the aforesaid, I am satisfied that, the applicant has paraded sufficient reasons warranting the grant of the application. The respective application for revision must be filed not later than thirty (30) days from the date of this Order. Costs to be in the main application.

DATED at **MBEYA** this 19th day of April, 2016.

S. E. A. MUGASHA
JUSTICE OF APPEAL

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




E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL