

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 15 OF 2016**

**SUNA MWINYIMKUU ..... APPLICANT**

**VERSUS**

**MOHAMED SELEMAN ..... RESPONDENT**

**(Application for extension of time within which to amend Memorandum of  
Appeal from the high Court of Tanzania at Dar es Salaam.)**

**(Bongole, J.)**

**dated the 31<sup>st</sup> day of August, 2011**

**in**

**Civil Appeal No. 39 of 2011**

.....

**RULING**

5<sup>th</sup> & 13<sup>th</sup> December, 2016

**MUGASHA, J.A.:**

The applicant has filed an application for extension of time in which to apply for amendment of a Memorandum of Appeal. The application is made under Rules 10 and 111 of the Tanzania Court of Appeal, Rules, 2009 (the Rules). In the Notice of Motion, the applicant has stated two grounds one being:

*" That, your Hon. Court of justice will be pleased to grant leave of extension of time within which, I the applicant may amend my forwarded Memorandum of Appeal in Civil Appeal No. 114 of 2015 at*

*the Court of Appeal of (T) at Dar-es-salaam and add three more grounds.”*

In the other ground, the applicant has elaborated on the intended amendments in the Memorandum of Appeal in Civil Appeal No. 114 of 2015 which is pending before the Court. The application is supported by the affidavit of **SUNA MWINYIMKUU**, the applicant.

The applicant appeared in person whereas Mr. Juma Mtatiro, learned counsel represented the respondent.

When the application was called on for hearing, parties were required to address me on the propriety of the application in terms of rule 111 of the Rules.

The applicant adamantly insisted that he prefers his application to be heard on merits. Mr. Mtatiro submitted that, the application is not properly before the Court because the applicant is seeking extension of time to amend the Memorandum of Appeal in Civil Appeal No. 114 which is pending before this Court. He pointed out

that, in terms of rule 111 of the Rules, the applicant can at any time, seek to amend the Memorandum of Appeal. He thus argued that, the application is misconceived and he prayed that it be struck out with costs. The applicant maintained that the substantive application must be heard.

The question to be determined is whether the present application is properly before the Court.

Applications for extension of time are governed by Rule 10 of the Rules which categorically states as follows:-

*"The court may, upon good cause shown, extend **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 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 so extended."*

Rule 111 of the Rules states as follows:-

*"The Court may at **any time allow amendment of** any notice of appeal or notice of cross-appeal or*

*memorandum of appeal as the case may be, or any other party of the record of appeal, on such terms as it thinks fit."*

The underlined expression clearly shows that, there is no time limit within which one can seek to amend the Memorandum of Appeal. Since, the time to amend the Memorandum of Appeal is not limited, Rule 10 is not applicable which renders the application misconceived as correctly submitted by Mr. Mtatiro learned counsel for the respondent. Since what is sought by the applicant can be remedied under Rule 111 of the Rules, to accede to the applicant's prayer to entertain this application for extension of time to amend the memorandum of appeal, is to condone to the abuse of court process.

Therefore, once again, I agree with Mr. Mtatiro that the present application is misconceived. In my considered view, the Registrar ought to have rejected the application in terms of rule 14 (3) of the Rules when it was initially presented for filing.


In the circumstances, I strike out the misconceived application with no order as to costs since the anomaly was raised by the Court *suo motu*.

**DATED** at **DAR ES SALAAM** this 6<sup>th</sup> day of December, 2016.

S. E. A. MUGASHA  
**JUSTICE OF APPEAL**

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



  
B. R. NYAKI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**