

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

CIVIL APPLICATION NO. 1 OF 2016

SETH JAPHET..... APPLICANT

VERSUS

NICHOLAUS MERORESPONDENT

**(Application for extension of time to
seek leave to appeal to the Court of Appeal against
the decision of the High Court
of Tanzania at Moshi)**

(Mzuna,J.)

dated the 24th day of February, 2012

in

Land Appeal No. 12 of 2009

.....

RULING

3rd & 7th August, 2017

MBAROUK, J.A.:

By way of Notice of Motion made under Rules 10 and 60(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules), the applicant is seeking for extension of time within which to seek leave to appeal to the Court of Appeal against Land Appeal No. 12 of 2009.

In this application, Mr. Peter Shayo, learned advocate, appeared for the applicant, whereas the respondent, appeared in person, unrepresented.

When the application was called on for hearing, it transpired that the respondent had earlier on 21st March, 2016 filed a notice of preliminary objection on points of law to the effect that:-

"The applicant has failed to cite specific provision (Rule) under which the application for extension of time is brought as required by the Rules (Rule 48) and has not stated the grounds for the reliefs sought."

Arguing in support of his preliminary objection, the respondent prayed to adopt his written submission filed earlier on 29th June, 2016. In his written submission, the respondent submitted that according to Rule 48(1) of the Rules, the applicant is supposed to cite a specific Rule under which the application may be brought and mandatorily state the grounds for the relief sought. The respondent further submitted that in this application, the applicant has cited two Rules.

He therefore submitted that, the citation of the two Rules, (Rules 10 and 60(1) of the Rules) show that reliefs are found under the two Rules which is not more than a guesswork.

The respondent further submitted that, according to Rule 48(1) of the Rules, the applicant is required to state his grounds for the relief sought in his notice of motion, but the applicant has not stated any ground for the relief sought. To be precise, he said, neither in his notice of motion nor in his affidavit the applicant has shown reasons as to why extension of time should be granted. He added that, such a defect renders the application incompetent. For that reasons, the respondent then urged the Court to find the application incompetent and hence struck it out with costs.

In his reply, Mr. Shayo simply submitted that citing Rule 60 (1) of the Rules is just an oversight which is not a fatal defect as far as they have also cited Rule 10 of the Rules which is relevant to this application.

As on the applicant's failure to state grounds in the notice of motion as mandatorily required by Rule 48 (1) of the Rules, Mr. Shayo readily conceded to that objection.

I am of the view that, as for as Mr. Shayo has readily conceded to the defect of not stating grounds in the applicant's notice of motion as mandatorily required under Rule 48 (1) of the Rules and as the applicant's affidavit as well has failed to give reasons or grounds for the delay to seek leave to appeal to the Court of Appeal, I am compelled to find the application incompetent. Hence, I think, without going to the next objection which may be just like an academic exercise, that suffices to dispose of the matter. In the event, and for the reason of being incompetent, the application is hereby struck out with costs.

DATED at **ARUSHA** this 03rd day of August, 2017

M.S. MBAROUK
JUSTICE OF APPEAL

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



A.H. MSUMI
DEPUTY REGISTRAR
COURT OF APPEAL