

IN THE COURT OF APPEAL OF TANZANIA

AT BUKOBA

CIVIL APPLICATION NO. 151/04 OF 2018

AMOS FULGENCE KALUNGULAAPPLICANT

VERSUS

KAGERA CO-OPERATIVE UNION (1990) LTD..... RESPONDENT

**(Application for extension of time to apply for revision against the
decision of the High Court of Tanzania
at Bukoba)**

(Mjemmas, J.)

dated the 19th day of February, 2015

in

Civil application No. 1/2016 or 435/04/2017

RULING

3rd & 6th September, 2018

WAMBALI, J.A:

The applicant, Amos Fulgence Kalungula has approached the Court under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules), seeking extension of time within which to lodge an application for revision. The application is brought through a Notice of Motion supported by an affidavit sworn by the applicant.

I think it is not out of place to state that, upon being served with the application, the respondent, Kagera Co-operative Union (1990) LTD reacted by lodging a notice of preliminary objection under Rule 107(1) of the Rules. The notice of preliminary objection contained three points. However, at the hearing, Mr. Aaron Kabunga, learned advocate who appeared for the respondent prayed to abandon two points. His prayer was granted by the Court. The objection therefore which remains is to the effect that: -

"The Application is irredeemably incurably incompetent for having been lodged without annexing thereto the ruling and order dated 8th December, 2017 of Bukoba Civil Application No 1 of 2016 where the Application is hinged."

On the other hand, the applicant who appeared in person at the hearing strongly objected to the preliminary objection. As it has been the practice of the Court, wherever there is an objection it must be heard first.

I was therefore obliged to determine the above raised objection before determining the substance of the application.

In his brief submission on the preliminary objection, Mr. Kabunga argued that although the applicant indicates in the application that his application is from the ruling in respect of Bukoba Civil Application No 1 of 2016 or No. 435/04 of 2017, he has not attached the copy of the said ruling and the drawn order. He further submitted that failure of the applicant to attach a copy is contrary to the requirement of Rule 49 (3) of the Rules. In support of his submission, Mr. Kabunga referred the Court to its decision in **Julius Cleopa and 3 others Vs. Josia Lengoya Sademaki**, Civil application No. 46 of 2015 (unreported). Mr. Kabunga further expressed doubts if Bukoba Civil Application No. 1 of 2016 has ever existed in any Court.

Finally, Mr. Kabunga urged the court to sustain the objection and strike out the application for failure of the applicant to comply with the requirement of the law. He also prayed that the respondent be granted costs.

When the applicant was given an opportunity to respond, he wondered why the advocate for the respondent claimed that he has not attached the copy of Bukoba Civil Application No 1 of 2016, while he has attached the same to the Notice of Motion together with other necessary copies of other decisions of the High Court and the Court of Appeal. However, later when the applicant was required to show the respective copy, he posed and in a surprise move he conceded that there is no copy of Bukoba Civil Application No. 1 of 2016. He conceded that the Court of Appeal has never delivered any ruling or judgment in respect of that application as it is still pending in Court. Mr. Kalungula submitted further that what he has attached to the application is a copy of Civil Application No. 435/4/2017 in which the Court of Appeal delivered its decision on 19th February 2015.

Nevertheless, despite, his concession with respect to the status of Bukoba Civil Application No. 1 of 2016, Mr. Kalungula maintained his position that the preliminary objection has no merit and it should be overruled with costs. He strongly urged the Court to determine his application on merit.

In view of the submissions of the parties, I think there is no dispute as conceded by the applicant that he has not attached a copy of the ruling in respect of Bukoba Civil Application No. 1 of 2016. Indeed, the applicant conceded that there is no ruling which has been made by any Court in respect of the said application.

The issue for determination therefore is whether the application is properly before this Court.

In this regard, it is noted that despite the fact that in his notice of motion the applicant indicated Bukoba Civil Application No. 1 of 2016 as the bases of his application, he also indicated the alternative simply as No. 435/04 of 2017.

At the hearing, it was noted that among the documents attached by the applicant to the application, is Civil Application No. 435/04/2017 which the applicant lodged in this Court involving the same parties where he sought to apply for revision against the orders of the High Court of Tanzania in Bukoba Civil Review No. 1 of 2011. A quick perusal indicates that the ruling of this Court in respect of that application was delivered on

5th December, 2017 and not in 19th February, 2015 as indicated by the applicant. The application was struck out on account of limitation. However, it is further indicated that the applicant was advised by the Court subject to the limitation of time specified under Rule 65(4) of the Rules to pursue another application.

In the circumstance, it is clear that Civil Application No. 435/4 of 2017 cannot be relied by the applicant to seek extension of time within which to apply for revision.

Moreover, I think, it is not unusual to point out that, earlier on the applicant had approached this Court on a similar application like Civil Application No. 435/04/ of 2017, that is, Civil Application No. 2 of 2013 which was struck out with costs on 20/2/2015 on account of the missing record of the proceedings and extracted order which deprived the Court the power to exercise revisional jurisdiction under section 4(3) of the Appellate Jurisdiction Act, Cap 141 R.E.2002.

It follows that, in view of chronology of events stated above, the applicant could not have come to this Court through the current application

seeking extension of time within which to lodge an application for revision against the decision of this court in Civil Application No. 435/04 of 2017. The applicant therefore, in view of what I have demonstrated above, can only come to this Court to seek extension of time within which to lodge an application for revision against the decision of the High Court in Civil Review No 1 of 2011 and not otherwise.

In the circumstance, taking into consideration the submission of Mr. Kabunga and the reality of what I have explained herein which is backed by the record, there is no dispute that the application before the court is totally defective and misguided. There is no doubt that the application is not premised on any decision of the High Court or this Court against which the applicant would have validly sought extension of time to lodge an application for revision. Thus, the issue is not only that the applicant has not attached the relevant documents with regard to the case which he considers as the bases of his application, but also that there is none which deserves the consideration of the Court. In the event, I sustain the preliminary objection raised by the respondent but on the incompetency of the application in view of what I have stated above. Moreover, I do not

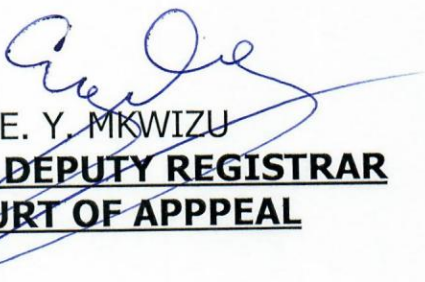
think that Rule 49(3) of the Rules which was relied by Mr. Kabunga to support his argument can apply in the circumstance of this application. This Rule concerns application for leave.

In the final analysis, I struck out the application under Rule 4(2) (c) with costs. It is so ordered.

DATED at **BUKOB**A this 6th day of September, 2018.

F. L. K. WAMBALI
JUSTICE OF APPEAL

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



E. Y. MKWIZU
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL

