

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

**CIVIL APPLICATION NO. 321/02 OF 2017**

**KHALFAN OMARY.....APPLICANT**

**VERSUS**

**SALMA ATHUMAN.....RESPONDENT**

**(Application from the decision of the High Court of Tanzania  
at Arusha)**

**(Mwaimu, J.)**

**dated the 26<sup>th</sup> day of September, 2016**

**in**

**Civil Appeal No. 13 of 2015**

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**RULING**

9<sup>th</sup> March & 21<sup>st</sup> August, 2018

**MUSSA, J.A.:**

This matter originates from the Arusha Urban Primary Court Matrimonial Cause No. 66 of 2014. In that cause, the respondent herein successfully petitioned the Court for a divorce and division matrimonial properties. As it were, the court awarded the respondent a quarter of the properties which were jointly acquired by the couple and, in addition, the applicant herein was ordered to pay the respondent a monthly maintenance sum of Shs 100,000/=.

On a first appeal to the District Court of Arusha, the applicant emerged successful as the verdict of the trial court was, in the main, reversed in his favour. But still, the applicant was dissatisfied with a portion of the decision and preferred Civil Appeal No. 13 of 2015.

Having heard the appeal, the High Court (Mwaimu, J.), on the 26<sup>th</sup> September, 2016 quashed and set aside the decision of the District Court whilst it restored the decision of the trial court, save for the order of the maintenance .

Discontented, on the 28<sup>th</sup> September, 2016 the applicant filed a Notice of Appeal and, a little later, he sought leave to appeal to this court which was granted by the High Court. (Moshi, J.) in Civil Application No. 198 of 2016. It is noteworthy that the High Court order granting leave was pronounced on the 9<sup>th</sup> March, 2016.

Having obtained the leave to appeal, the applicant realised that the sixty days prescribed by Rule 90 (1) of the Court of Appeal Rules, 2009 (the Rules) within which he was required to file, the appeal had long expired. Apparently, in a desperate attempt to salvage his desire, he lodged the

present application through which he seeks extension of time within which to file the appeal belatedly.

The application is by way of a Notice of Motion which is taken out under Rule 10 of the Rules. The same is supported by an affidavit duly sworn by the applicant. The applicant also lodged written submissions to buttress his ground for the delay which is that the same resulted from his being constrained to wait for the ruling on leave to appeal.

The application is being resisted by the respondent who has, in that regard, lodged an affidavit in reply.

At the hearing before me, the applicant fully adopted the Notice of Motion, the affidavit in support, as well as his written submissions, without more. On her part, the respondent similarly adopted her affidavit in reply,

Addressing the application at hand, I should preface my determination with the undeniable position of the law that this Court and the High Court have concurrent jurisdiction with respect to the grant of an extension of time. What is more, Rule 47 of the Rules requires that, whenever an application may be made either to the Court or the High Court, it shall, in the first instance, be made to the High Court. Thus, it is only in the event of a refusal

of the High Court that an applicant may knock the doors of this Court for a second bite under Rule 45(b) of the Rules.


That is to say, the application at hand has been prematurely sought, much as the applicant had to prefer it, in the first instance, in the High Court. It is, so to speak, incompetent and the same is, accordingly, struck out. It is so ordered.

**DATED** at **ARUSHA** this 2<sup>nd</sup> day of August, 2018.

K. M. MUSSA  
**JUSTICE OF APPEAL**

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



  
S.M. KULITA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**