

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: MUSSA, J.A., MKUYE, J.A., And WAMBALI, J.A.)

CIVIL APPLICATION NO. 59 OF 2015

JUSTIN JOEL K. MOSHI..... APPLICANT
VERSUS

C.M.C. LAND ROVER (T) LTDRESPONDENT

**(Application for leave to appeal in Civil Matters from the
Decision of the High Court of Tanzania
at Dar es Salaam)**

(Shangwa, J.)

**dated the 27th day of April, 2007
in
Civil Appeal No. 105 of 2005**

RULING OF THE COURT

3rd & 15th October, 2018

MKUYE, J.A.:

By a notice of motion, the applicant Justine Joel K. Moshi is moving the Court for an order that this Honourable Court be pleased to grant leave for the applicant to appeal to this Court against the Judgment and decree of the High Court (Shangwa, J.) dated 27/4/2007 in Civil Appeal No. 105 of 2005 on the grounds that:-

- (i) Whether both the High Court and the trial court were proper to hold that the applicant has no right to claim for any employment entitlements as he resigned from employment.
- (ii) Whether both the High Court and the trial Court were proper to held that the applicant voluntarily and unconditionally resigned for the job on giving 24hours notice without having paid one months salary in lieu of the notice.
- (iii) That both the High Court and the trial court failed to evaluate the evidence given for the applicant which establish conclusively that the applicant is entitled to payment of the outstanding areas of salaries.

The application is predicated under Rule 45(a) and (b), 48 and 49(1) and (3) of the Tanzania Court of Appeal Rules, 2009 (the Rules) and it is supported by an affidavit deposed by the applicant.

From what can be gleaned from the record, on 27/4/2007 the High Court of Tanzania at Dar es salaam Registry passed a judgment in Civil

Appeal No. 105 of 2005 against the applicant. Aggrieved with the said decision, the applicant desired to appeal against it. He lodged a notice of appeal and applied for copies of proceedings, judgment and decree. When he realised that he was late to appeal, he filed an application in the High Court Misc. Civil Application No. 153 of 2013 for extension of time to lodge a notice of appeal and applying for leave to appeal to the Court of Appeal was granted on 28/2/2014. On 12/3/2014, the applicant filed an application for leave to appeal against the High Court's decision (Shangwa, J) which was christened misc. Application No. 89 of 2014. In its ruling the High Court dismissed it for lack of merit. Hence, this application.

At the hearing of the application the applicant appeared in person and unrepresented whereas the respondent was represented by Mr. Paschal Kamala, learned advocate.

From the very outset the Court *suo motu* invited the parties to address it on the competence of the application the more so that it is apparent that it is time barred.

In response the applicant sought the Court's indulgence to proceed with the hearing of the application as he being a layman did not know such issues.

On his part, Mr. Kamala submitted that as the applicant's first application for leave to appeal was refused by the High Court, he was required under Rule 45 (a) of the Rules to lodge this application within 14 days from the date of such refusal.

Mr. Kamala contended further that since the first applicant was refused on 10/3/2015 and this application was filed on 27/3/2015, it was time barred. In the premises he urged the Court to strike it out.

From what it can be gleaned from the record it is common ground that the decision of Shangwa, J was delivered on 27/4/2007. The applicant lodged a notice of appeal on 4/3/2014 after having been granted an extension of time vide Misc. Civil Application NO. 153 of 2013 (Teemba, J) dated 28/2/2014. Like wise he applied for copies of proceedings, Ruling and drawn order on 5/3/2014 and lodged a chamber summons seeking leave to appeal to this Court in which through its Ruling (Mkasimongwa, J)

handed down on 10/3/2015 dismissed it for lack of merits. The applicant lodged this application on 27/3/2015.

Rule 45 which is among the provisions of the law invoked by the applicant governs applications for leave before the High Court as well as to this Court. The said provision provides as follows:-

"45. In Civil matters

- (a) Where an appeal lies with the leave of the High Court, application for leave may be made informally, when the decision against which it is desired to appeal is given, or by chamber summons according to the practice of the High Court, within fourteen days of the decision;*
- (b) Where an appeal lies with the leave of the Court, application for leave shall be made in the manner prescribed in Rules 49 and 50 and within fourteen days of the decision against which it is desired to appeal or **where the application for leave to***

appeal has been made to the High Court and refused, within fourteen days of that refusal.

[Emphasis added]

In our understanding of Rule 45 (b) of the Rules, after the High Court has refused an application for leave to appeal to the Court of Appeal, the applicant may knock the door of this Court by way of another application on a second bite within a period of fourteen days of the High Court's refusal to grant it.

It is obvious in this case that after the applicant was aggrieved by the decision of Shangwa J, he after obtaining extension of time lodged an application for leave to appeal which was christened Misc. Civil Application No. 89 of 2014.

In the High Court decision dated 10/3/2015 leave was refused. The notice of motion moving this Court in an application for leave to appeal on a second bite was lodged on 24/3/2015. It means this application was filed 3 days after the date the application ought to have been filed under normal circumstances the application ought to be filed before or by 24/3/2014. By filing it on 27/3/2014, it was filed out of time.

In the final event, since the application was filed out of time it is incompetent before the Court. For that reason it is accordingly struck out. As the point the subject of this decision was raised by the Court *suo motu*, we make no order as to costs.


DATED at **DAR ES SALAAM** this 16th day of October, 2018.

K. M. MUSSA
JUSTICE OF APPEAL

R. K. MKUYE
JUSTICE OF APPEAL

F. L. K. WAMBALI
JUSTICE OF APPEAL

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


S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL