

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

CIVIL APPLICATION NO. 104/15 OF 2019

MWAJUMA AHMADA MZEE.....APPLICANT
(HIMIDI RAMADHAN MKUYA - LEGAL REPRESENTATIVE)

VERSUS

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| 1. HADIA AHMADA MZEE 2. AHMADA MZEE AHMADA 3. KAMISHENI YA WAQFU NA MALI YA AMANA ZANZIBAR | } |RESPONDENTS |
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(Application for extension of time to lodge notice of appeal out of time against the
Decision of the High Court of Zanzibar at Vuga)

(Makungu, C.J.)

Dated the 24th Day of March, 2015
in
Civil Case No. 30 of 2012

RULING

29th November, & 2nd December, 2019

KEREFU, J.A.:

Mwajuma Ahmada Mzee, the applicant herein has lodged this application on 30th October, 2018 praying for an order of extension of time to lodge the notice of appeal against the decision of the High Court of Zanzibar sitting at Vuga (Makungu, C.J) dated 24th March, 2015 in Civil Case No. 30 of 2012. The application is brought by a way of Notice of Motion under Rule 45A (1) (a) and (3) of the Tanzania Court of Appeal

Rules, 2009, (the Rules). The application is supported by an affidavit duly deposed by Himidi Ramadhan Mkuya, the applicant's legal representative. On the other hand, the first and second respondents have filed affidavits in reply, while the 3rd respondent opted not to file any reply.

It is on record that; this matter has a long history. It traces back in 2012 when the applicant instituted Civil Case No. 30 of 2012 against the respondents in relation to the administration of the estate of the late Ahmada Mzee Mabrouk, who died intestate in 2007. On 24th March, 2015, after hearing the parties, the High Court decided the case in favour of the respondents. Aggrieved, the applicant lodged Civil Appeal No. 122 of 2015 in the Court of Appeal. The said appeal was struck out on 8th December, 2015 for being incompetent. Then, the applicant lodged Civil Application No. 01 of 2016 in the High Court for extension of time. The said application was granted on 13th October, 2016.

Subsequently, the applicant lodged Civil Appeal No. 178 of 2017 which was, likewise struck out on 7th December, 2017 for being incompetent. Still determined, the applicant lodged Civil Application No. 6 of 2018 in the High Court seeking extension of time to lodge the notice of

appeal out of time. However, the said application was refused on 19th September, 2018 as the applicant has failed to adduce good cause for the delay. Thus, the applicant decided to lodge this current application under Rule 45A (1) (a) and (3) of the Rules, as a second bite.

When the application was called on for hearing, Mr. Himid Ramadhan Mkuya, in a representative capacity, appeared for and on behalf of the applicant, Mwajuma Ahmada Mzee. On the other hand, Mr. Rajab Abdallah Rajab, learned counsel appeared for the first respondent, whereas the second and third respondents appeared in person, unrepresented.

Prior to the commencement of hearing of the application on merit, I found it apposite to satisfy myself, as to whether the application was lodged within the prescribed time under Rule 45A (1) (a) and (2) of the Rules. More particularly, it is noteworthy that, the application before me was lodged on 30th October, 2018 after lapse of forty two (42) days from the date of the decision of the High Court, instead of fourteen (14) days prescribed under Rule 45A (1) (a) of the Rules.

In response to the raised issue, the applicant though readily conceded that the application was lodged out of the prescribed time, but

argued that, the delay was occasioned by the delay in obtaining the copies of the High Court's decision and proceedings. He said that, he requested for the said documents via his letter dated 29th September, 2018 and lodged this application on 30th October, 2018. He thus prayed to the Court to scrutinize the record and upon doing so, it would find out that the application was lodged within time.

In response, Mr. Rajab argued briefly that, since the application was lodged out of the prescribed time under Rule 45A (1) (a) of the Rules, the same is time barred and deserves to be struck out. He further challenged the submission of the applicant that, though he claimed to have requested for copies of the High Court's decision and proceedings, there is no evidence to that effect, as the said letter is not included in the record of the application. He also added that, the applicant cannot also benefit from the exclusion of the days used to prepare the said documents, because there is no certificate of delay issued by the Registrar under Rule 45A (2) of the Rules. He finally, prayed for the application to be struck out without costs.

On his part, the second respondent did not have anything to add, while the third respondent supported the submission made by Mr. Rajab.

I have carefully examined the record before me and considered the oral submissions made by the parties. There is no dispute that, this is a second bite application lodged under Rule 45A (1) (a) and (3) of the Rules after refusal by the High Court of the first application for extension of time. To facilitate the appreciation of the position put forward herein, I find it apposite to reproduce the contents of Rule 45A (1) (a) of the Rules, which provides that:-

*“Where an application for extension of time to lodge a notice of appeal is refused by the High Court, the applicant may **within fourteen days of such decision apply to the Court for extension of time.**” [Emphasis supplied].*

In the application at hand, it is on record that, the decision of the High Court which refused the first application for extension of time was delivered on 19th September, 2018 and this application was lodged on 30th October, 2018 after lapse of forty two (42) days thus contravening the provisions of Rule 45A (1) (a) of the Rules. I am mindful of the fact that,

in his submission the applicant had since indicated that, the delay was caused by the process of obtaining the High Court documents and urged me to find out that the application is lodged within time. With respect, I am unable to agree with the applicant's claim, as the same is not supported by the record of the application. I will demonstrate, **first**, the letter which the applicant is relying upon to have submitted to the Registrar to request for the said documents is not part of the record of the application. It is even not certain as when exactly the applicant requested and collected the said documents from the High Court's Registry. **Second**, there is no certificate of delay issued by the Registrar to exclude the period used to prepare and deliver those documents to the applicant. Therefore, and as eloquently argued by Mr. Rajab, the applicant cannot benefit from the provisions of Rule 45A (2) of the Rules.

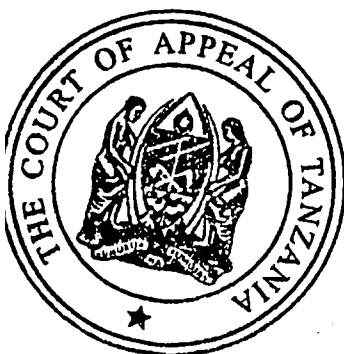
That said, since the current application was lodged on 30th October, 2018 after lapse of more than forty two (42) days beyond the prescribed period of fourteen (14) days, the same is time barred.

Eventually and for the foregoing reasons, the incompetent application is hereby struck out for being time barred. I make no order as to costs. Order accordingly.

DATED at **ZANZIBAR** this 29th day of November, 2019.

R. J. KEREFU
JUSTICE OF APPEAL

The Ruling of the Court delivered this 2nd December, 2019 in the presence of Mr. Himidi R. Mkuya, the Applicant's Representative and Mr. Rajab A. Rajab, Counsel for the 1st Respondent, who is also holding brief for Mr. Assaa Jafar Omar the 3rd Respondent and in the absence of the 2nd Respondent, is hereby certified as a true a copy of the original.




A.H. MSUMI
DEPUTY REGISTRAR
COURT OF APPEAL