

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 78/17 OF 2020

**1. NJOWOKA M. M. DEO APPLICANTS
2. AMIN ABDULRAHIM PREMJI**

VERSUS

MOHAMED MUSA OSMAN RESPONDENT

**(Application for extension of time to file notice of appeal and extension of
time to apply for leave to appeal to the Court of Appeal against the whole
judgment and decree of High Court of Tanzania
at Dar es Salaam)**

(Maghimbi, J.)

Dated the 28th day of March, 2019

in

Misc. Land Application No. 276 of 2018

RULING

19th March & 22nd April, 2021

KITUSI, J.A.:

Against the application for extension of time by way of second bite made under Rule 45 A (1) (a) and (b) of the Tanzania Court of Appeal Rules, 2009, two points of preliminary objection have been raised by counsel for the respondent. They are:-

- (a). That the application being second bite preferred under Rule 45 A (1) (a) and (b) of the Tanzania Court of Appeal Rules, 2009 as amended by the Tanzania Court of Appeal (Amendment) Rules, 2017 is filed out of time. The same ought to have been filed within fourteen days of such decision of refusal by the High*

Court of Tanzania which was delivered on 28th March, 2019.

(b). That the applicant cannot rely upon the Certificate of delay issued under Rule 45 A (2) of the Tanzania Court of Appeal Rules, 2009 which is defective both in content and substance as it excluded the period from 9th April, 2019 to 3^d March, 2020 making total number of 330 days excluded whereas:-

(i) The applicant admitted to have been informed that the requested document are ready for collection on 25th July, 2019 and the computation of period in the Certificate of delay could have ended there. The applicant was already in possession of the copy of ruling and drawn order which are the only requisite documents required to accompany the application for extension of time for second bite as per Rule 45 A (3) of the Tanzania Court of Appeal (Amendment) Rules, 2017 and time to be excluded was time for preparation of a copy of the decision and the order only by virtue of Rule 45 A (2).

(ii) In the alternative, the applicants having admitted that on 14th February, 2020 the office of the Deputy Registrar, High Court of Tanzania (Land Division) notified them that the copies of the proceedings in Misc. Land Application No. 276 of 2018 are ready for collection, then the Certificate of Delay was erroneously drawn to exclude the dates up to 3^d March, 2020 instead of 14th February, 2020 when

the applicants were informed that proceedings were ready for collection and actually were collected on that date. The number of days to be excluded could have been 313 days as from 14th February, 2020 and this application ought to have been filed within fourteen days on or before 28th February, 2018.

(iii) The computation and exclusion of time based on the date the proceedings were ready for collection or when the Certificate of delay was issued was irregular and vitiates the Certificate as the proceedings are not requisite documents to accompany the application for extension of time on the second bite envisaged by Rule 45 A (3).

At the hearing of this application, Mr. Godwin Anthony Fiso and Mr. Thomas Eustace Rwebangira, learned advocates appearing for the applicants and respondent respectively had to argue the points of preliminary objection first. The undisputed background of the matter is as follows.

In Land Case No. 139 of 2011 the High Court entered judgment in favour of the respondent, which the applicants were aggrieved with. Thereafter, on 17/12/2015 the applicants lodged a notice of appeal intending to challenge that judgment and decree and applied for necessary documents on the same day. On 28/2/2018, Vide Civil

Application No. 133 of 2016 the notice of appeal was struck out for failure by the applicants to take essential steps. What the applicants did after their first notice of appeal was struck out is essentially the basis of the preliminary objections it being alleged by the respondent that this application for extension of time is time barred. So, what is it that the applicants did?

On 16/5/2018 the applicants filed an application for extension of time within which to lodge a fresh notice of appeal, but that application (Misc. Land Application No. 276 of 2018) was dismissed on 28/3/2019. On 29/3/2019 the applicants wrote a letter to request for the documents requisite for filing a second bite application. But then on 9/4/2019 the applicants lodged a notice of intention to appeal the ruling of the High Court in Misc. Land Application No. 276 of 2018 (Maghimbi, J.). In pursuance of this other intention the applicants again wrote to request for copies of ruling, drawn order and proceedings.

On 11/4/2019 the applicants wrote yet another letter to apply for a copy of drawn order and certificate of delay in Misc. Land Application No. 276 of 2018 for the purpose of applying for a second bite before the Court. On 25/7/2019 the applicants were notified that the copy of the drawn order was ready for collection. Mr. Rwebangira has argued that from 25/7/2019 the applicants had all the requisite documents because the

copy of the ruling in Misc. Land Application No. 276 of 2018 had been supplied to them on the very date of delivery.

The learned counsel would have me hold that the time within which the applicants were required to apply for a second bite must start to run from 25/7/2019, and that this application lodged on 18/3/2020 is time barred.

On the certificate of delay, Mr. Rwebangira submitted on the principle that it should exclude days from the date the documents are requested to the date they are supplied. He referred me to the case of **Puma Energy Tanzania Limited v. Diamond Trust Bank Tanzania Ltd**, Civil Appeal No. 54 of 2016 (unreported). So, he faulted the first certificate which was issued on 20/2/2020 for excluding the days from 9/4/2019 when the drawn order was requested, to 3/3/2020 instead of excluding the days from 9/4/2019 to 25/7/2019 when the said drawn order was supplied. The learned counsel took the view that the first certificate was not valid.

Somehow the applicants applied for a valid certificate and they got issued one dated 3/3/2020. This also did not go unchallenged by Mr. Rwebangira who submitted that the applicants would have been within time if they had filed their application within 14 days of that certificate,

but they did not. He pointed out that the application would have been within time if it had been filed on 17/3/2020, but this one was filed a day late.

In his response Mr. Fiso submitted that the application was filed on 17/3/2020 therefore within time. On being probed he conceded that the drawn order was first supplied to the applicants on 25/7/2019 but it was an incorrect version. On 3/3/2020 the Registrar issued the applicants with another copy of the drawn order which was, however, similar to the earlier copy. Asked whether the Registrar wrote to the applicants on 3/3/2020 as the basis for submitting that the days of exclusion ran from 25/7/2019 to 3/3/2020, Mr. Fiso conceded that the only letter they have is that dated 14/2/2020.

In a short rejoinder, Mr. Rwebangira submitted that both certificates were purporting to exclude days from the date of request to the date of issue of the certificate which is not the correct formulae.

Having received the arguments from both counsel, my starting point is that an application for a second bite extension of time has to be made within 14 days of the decision of the High Court. Where that cannot be done within 14 days and the reason for that delay turns out to be caused by the delay in being supplied with the requisite documents, then it must

be certified by the Registrar. That is my understanding of Rule 45 A (1) and (2) of the Rules which provides:-

"45A- (1) Where an application for extension of time to:-

(a) lodge a notice of appeal;

(b) apply for leave to appeal; or

(c) apply for a certificate on a point of law, is refused by the High Court, the applicant may within fourteen days of such decision apply to the Court for extension of time.

(2) In computing the time within which to lodge an application under this rule, there shall be excluded such time as may be certificate by the Registrar of the High Court as having been required for preparation of a copy of the decision and the order."

There are many decisions on the need for the certificate of the Registrar to be free from error. We may only refer to **Kantibal Patel v. Dahyabhai Mistry** [2003] T.L.R. 437 cited in **Ecobank Tanzania Limited v. Future Trading Company Limited**, Civil Appeal No. 82 of 2019 (unreported) which the respondent's counsel relied on.

The Court said this of the certificate:-

"The very nature of anything termed a certificate requires that it be free from error and should an error crop into it,

the certificate is vitiated. It cannot be used for any purpose because it is not better than a forged document."

How should a correct certificate of delay be? This has also been a subject of many decisions some of which, like, **Hamisi Mdida and Saidi Mbogo v. The Registered Trustees of Islamic Foundation**, Civil Appeal No. 59 of 2020 (unreported), have been cited by the respondent's counsel again. The Court stated the following regarding what the Registrar should state in the certificate:-

"He must state in very clear terms that the days to be excluded in computing the period of limitation are those from the time when the appellant requested for the copies of proceedings to the date he notified him that the documents were ready for collection."

Contrary to what the law requires, the applicants are armed with a certificate that purports to exclude days from the date when the documents were requested to the date of issuance of the certificate. Whether the date of the issuance of the certificate was 14/2/2020 or 3/3/2020 is now moot because that certificate would be invalid either way. In the case of **Yazidi Kassim T/A Yazidi Auto Electric Repairs v. The Hon Attorney General**, Civil Appeal No. 2015 of 2017 (unreported).

We addressed a similar error in the following terms:-

"We are further of the view that the Deputy Registrar was wrong and misdirected himself when he took into account the day when judgment of the High Court was delivered i.e 29th April 2016 up to the date of issuance of the certificate of delay as the dates to be taken into account when excluding the number of days... the number of days to be excluded should be from when the proceedings of the High Court were requested to the day when the same were delivered to the appellant."

With respect there is no need to play seek and hide in this case. The applicants had earlier intended to appeal the decision of Maghimbi, J. and obtained a certificate of delay for that purpose on 20/2/2020. When the applicants realized that they could not appeal against the decision of Maghimbi, J. they returned the certificate of delay that had earlier been issued and applied for another to suit the intended application under Rule 45 A (2) of the Rules. This second certificate was issued on 3/3/2020 and purported to exclude the days to that date. In the absence of a letter dated 3/3/2020 informing the applicants that the requested documents were ready for collection, I agree with Mr. Rwebangira's argument that the Registrar took the date of issuance of the certificate as the one to be taken into account. That was wrong and a misdirection.

I am afraid there is so much mismatch in this matter that it is not possible to consider rectification. Thus, I sustain the two points of preliminary objection and strike out this application for being time barred.

Order with costs

DATED at **DAR ES SALAAM** this 20th day of April, 2021.

I. P. KITUSI
JUSTICE OF APPEAL

Ruling delivered this 22nd day of April, 2021 in the presence of Mr. Godwin Anthony Fiso, learned counsel for the Applicants and Mr. Thomas Eustace Rwebangira, learned counsel for the Respondent, is hereby certified as a true copy of the original.




F. A. MITARANIA
DEPUTY REGISTRAR
COURT OF APPEAL