

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

CIVIL APPLICATION NO. 499/08 OF 2020

**PATRICK GEORGE (as an attorney of
RAMADHANI OMARYAPPLICANT**

VERSUS

ZAINABU OMARIRESPONDENT

**(Application for extension of time from the decision of the High Court of
Tanzania, at Dodoma)**

(Masaju, J.)

**Dated the 2nd day of March, 2020
in**

Misc Land Application No. 03 of 2019

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RULING

9th & 11th August, 2021

MAIGE J.A.:

The application at hand is an *omnibus* application. It combines applications for extension of time to lodge a notice of appeal and to apply for leave to appeal. The application has been filed on behalf of the applicant, Ramadhan Omary, by Patrick George ("the attorney") who is holding a special power of attorney registered in the registry of documents vide registration number 448/2019. It has been brought under rule 10 of Tanzania Court of Appeal Rules, 2009 ("the Rules") and is founded on the affidavit of the attorney. The respondent has not filed an affidavit in reply.

The application is traceable from the proceeding in Land Application No. 15 of 2019 at the District Land and Hosing Tribunal of Singida wherein the applicant was a loser in a contest for ownership of a two acres of land located at Mungumaji Village in Singida Municipality. Being aggrieved from the decision, the applicant appealed to the High Court vide Miscellaneous Land Appeal No. 18 of 2011. On 28th August 2015, being hardly four years from the date of filing of the appeal, the same was dismissed for the reason that, the applicant had never appeared since the date of institution of the appeal. His attempt to have the dismissal order set aside and the appeal restored vide Misc. Land Application No. 68 of 2018 proved futile as the application was dismissed, on 21st December 2017 for want of merit. On 27th December 2018 being more than a year from the date of dismissal of the application for restoration of the appeal, the applicant applied for extension of time to appeal against the said decision on the ground of sickness. The application was dismissed for want of merit on 2nd March 2020 and hence the instant application.

Under section 11(1) of the Appellate Jurisdiction Act, Cap. 141, R.E., 2019 read together with rule 45A (1) (a) and (b) of the Rules, both this Court and the High Court enjoy concurrent jurisdiction to grant extension of time to lodge a notice of appeal and to apply for leave to appeal. It is

the law however under rule 47(1) of the Rules that, where jurisdiction to entertain an application is conferred on both this Court and the High Court, the application must first be made to the High Court. It is upon determination of the application at the High Court that, the applicant, if aggrieved, can file a fresh application to this Court as a second bite.

At the date of hearing, the attorney represented the applicant. The respondent appeared in person. Aside from addressing me on the substance of the application, I requested the parties to address me on competency of this application and more particularly the application for extension of time to apply for leave to appeal which has been brought for the first time in this Court.

Being laypersons, neither of the parties commented on the issue. They just left it for determination of the Court. On the substance of the application, the attorney adopted the facts in the affidavit to read as part of his submission and contended that, sufficient cause for extension of time has been demonstrated. The respondent opposed the application and urged the Court to dismiss the application.

I have considered the rival submissions. As it is the practice, I will first consider the competency of the application starting with the

application for extension of time to apply for leave to appeal. This part of the application as earlier stated, was not preceded by a first bite to the High Court as required by rule 47 of the Rules. The requirement under the respective rule in my reading is mandatory. The jurisdiction of the Court of Appeal to entertain an application on which it enjoys concurrent jurisdiction with the High Court arises after the applicant has attempted an application to the High Court and failed. This position was clearly stated in the case of **Thomas David Kirumbugo & Another v. Tanzania Telecommunication Co. Ltd**, Civil Application No. 1 of 2005 (unreported) where it was held:-

From this provision, the position of the law is clear and unambiguous. The application for leave to appeal or extension of time in which to appeal shall first be made to the High Court. Thereafter, and as provided under rule 43 (b), where application for leave to appeal has been made to the High Court and refused, the application shall be made to the Court within fourteen days of that refusal.

As the applicant did not, before lodging the instant application, attempt a first bite to the High Court, the application for extension of time to apply for leave to appeal is premature and it is hereby struck out.

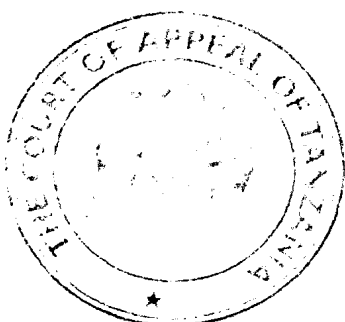
This now takes me to the first element of the application which is for extension of time to lodge a notice of appeal. Under rule 45A 1 (a) of the Rules, it is express that, where an application for extension of time to lodge a notice of appeal is refused by the High Court, an application to this Court as a second bite must be filed within 14 days from the date of refusal. In here, the ruling refusing an extension of time was delivered on 2nd March 2020. This application was lodged on 23rd April 2020. There is nothing in the affidavit to suggest that a certificate of exclusion had been issued by the Registrar of the High Court in terms of rule 45A (2) of the Rules. In the circumstance, the application for extension of time to lodge a notice of appeal is hopelessly time barred. It is accordingly struck out.


In the final result, the application is struck out. Since the respondent did not file any affidavit in reply, I will not give an order as to costs.

DATED at DODOMA this 11th day of August, 2021

I. J. MAIGE
JUSTICE OF APPEAL

The ruling delivered this 11th day of August, 2021 in the presence of the Applicant in person and the Respondent in person is hereby certified as a true copy of the original.




S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL