

IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA
CIVIL APPLICATION NO. 440/08 OF 2020

JEREMIA MUGONYA EYEMBE.....APPLICANT

VERSUS

HAMISI SELEMANI.....RESPONDENT

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

(Mgeyekwa, J.)

dated the 26th day of July, 2019

in

Misc. Civil Application No. 44 of 2019

RULING

23rd & 29th November, 2021

MAIGE, J.A:

By a notice of Motion preferred under rule 10 of the Tanzania Court of Appeal Rules, 2009 (“the Rules”) and which is supported by an affidavit deposed by the applicant, this Court is called upon to extend time to file a notice of appeal and to apply for leave to appeal to this Court against the ruling of the High Court of Tanzania at Mwanza in Miscellaneous Civil Application No. 44 of 2019 on the following grounds:

- (a) That in the circumstances of this case it is in the interests of justice to grant this Application in order to address two conflicting decisions of the High Court regarding ownership of the suit land,

that is to say, (HC) Civil Appeal No. 52 of 1996 and (HC) Civil Appeal No. 39 of 1997.

(b) The Respondent is occupying the suit land pursuant to the judgment in (HC) Civil Appeal No. 52 of 1996 which was procured illegally.

(c) That the Ruling in Civil Revision No. 3 of 2010 which gave rise to the ruling sought to be impugned by way of appeal did not properly address the two conflicting decisions of the High Court aforesaid.

In the conduct of this application, Mr. Nasimire, learned advocate appeared for the applicant whereas Mr. Rutahindurwa, also learned advocate, appeared for the respondent.

In his brief oral submission, Mr. Nasimire adopted the facts in the affidavit to read as part of his submission and urged the Court to grant the application on the sole ground of illegality. The point of illegality involved in the intended appeal, the counsel submitted, is existence of two conflicting decisions on the ownership of the disputed property. The first decision is the Judgment in HC Civil Appeal No. 52 of 1996 between the parties herein which was delivered on 9/04/1997 ("the first Judgment"). The second one is the judgment in HC Civil Appeal No. 39 of 1997 between Amina Bunyaga on the one hand and the respondent

and the National Bank of Commerce on the other hand which was delivered on 12/08/2004 (“the second Judgment”). In the opinion of Mr. Nasimire, the conflict in the said decisions would have been resolved if the High Court had extended time to appeal against its decision in Civil Revision No. 3 of 2010.

In refutation, Mr. Rutahindura submitted that, the application is without merit as the applicant has not demonstrated any illegality in the decision sought to be appealed against. Nor in the **first Judgment**. He does not agree with the proposition that, the two judgments under discussion are in conflict because the parties and reliefs therein are different. In any event, he submitted, the two conflicting decisions could not be resolved in an application for extension of time.

Having carefully considered the rival submissions in line with the affidavit and its annexures, I find that, the main issue which I have to address is whether sufficient cause for extension of time has been demonstrated. In this case, the applicant has solely relied on illegality as a ground for an extension of time. Admittedly, illegality or otherwise in the impugned decision can by itself constitute a sufficient ground for an extension of time. This is in accordance with the principle in **the Principal Secretary Ministry of Defence and National Service vs. Devram Valambia**, (1992) TLR 185. However, for illegality to be the

basis of the grant, it is now settled, it must be apparent on the face of the record and of significant importance to deserve the attention of the appellate court. [See for instance , **Lyamuya Construction Company Ltd vs. Board of the Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported)]. From the factual background of this application as shall be exposed hereinafter, I am of the firm opinion that, this application is devoid of any merit and it is indeed an abuse of the Court process.

The application is a continuation of a series of proceedings at the instance of the applicant seeking to reverse the **first Judgment**. In the said decision, the decree of the Resident Magistrate Court of Musoma in Civil Case No. 39 of 1996 which had ordered the respondent to yield vacant possession of the property at 91 Block "C" Kamungonge area within the Township of Musoma ("the disputed property") to the applicant was set aside and the respondent declared the lawful owner of the disputed property.

Though the **first judgment** has never been challenged, in 2006, the applicant purporting to execute the decree of the District Court of Musoma in Civil Case No. 4 of 1996, evicted the respondent from the disputed property. In effect, the respective decree which was confirmed

in the **second Judgment**, dismissed the claim by the said Amina that the disputed property was invalid for want of spousal consent.

Subsequently, the respondent applied for execution of the decree in the **first Judgment**. The District Court dismissed the application for being time barred. Aggrieved, the respondent applied for Revision to the High Court vide Civil; Revision No. 3 of 2010. The High Court revised the decision and held that, the application for execution by the respondent was not time barred. On whether the District Court was *functus officio* to entertain the application for the reason of there being an eviction order under the judgment in Civil Case No 4 of 1996, the Court held that the respective judgment had nothing to do with the respective execution proceeding since the applicant was not a party to the said decision. In the final result, the High Court remitted the file to the District Court with the direction that the application for execution be entertained.

Aggrieved by the decision, and on realizing that he did not timely apply for leave to appeal, the applicant successfully applied for an extension of time to apply for the said leave vide Miscellaneous Application No. 137 of 2014. Upon being granted an extension of time, the applicant filed Misc. Civil Application No. 98 of 2015 for leave to appeal to this Court, the application which was struck out, on 22nd November, 2016, for being preferred under a wrong provision of the

law. On 1st June 2017, being more than 7 months from the date of the order just referred, the applicant filed Misc. Civil Application No. 72 of 2017 (henceforth "the previous decision") praying for extension of time to lodge a notice of appeal and leave to appeal against the decision of the High Court in Civil Revision No. 3 Of 2010. The application was dismissed for want of merit on 7th March 2019.

Quite unusually, on 26th day of March 2019, the applicant initiated Misc. Civil Application No. 44 of 2019. Just as it was in the **previous decision**, in this application the applicant was seeking for extension of time to lodge a notice of appeal and to apply for leave to appeal against the same decision of the High Court in Civil Revision No. 3 of 2010. The High Court as per Mgeyekwa, J, dismissed the application for want of jurisdiction on account that, the issue had been finally and conclusively determined by her learned brother Mdemu, J in the **previous decision**.

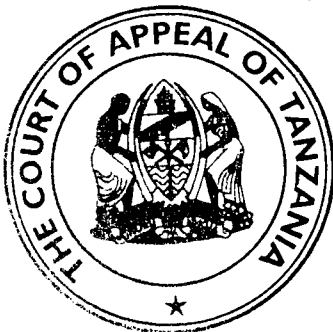
It is this decision which the applicant is intending to challenge to the Court if time within which to file a notice of appeal and to apply for leave to appeal is granted. The applicant has not in his submission disclosed any element of illegality in the decision he is intending to appeal against. Indeed, there is nothing in the affidavit and submission to suggest that, the High Court having decided a similar application in its previous decision enjoyed jurisdiction to rehear and reconsider the same

issue. It is on that account that, I find this application devoid of any merit and an abuse of the court process. It is accordingly dismissed with costs.

DATED at **MWANZA** this 29th day of November, 2021.

I. J. MAIGE
JUSTICE OF APPEAL

This Ruling delivered this 29th day of November, 2021 in the presence of the Applicant in person unrepresented and Ms. Francisca Ntemi, learned counsel for the Respondent, is hereby certified as a true copy of the original.




F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL