

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

CIVIL APPLICATION NO. 252/01 OF 2020

SHABAN R. KAVITENDAAPPLICANT

VERSUS

YASIN S. KAVITENDARESPONDENT

**(An Application for extension of time to apply for certificate on points of
law against the decision of the High Court of Tanzania
at Dar es salaam)**

**Dated 12th day of October, 2018
in
PC Civil Appeal No. 94 of 2017**

RULING

25th March & 01st April, 2022

MAIGE, J.A.

This application has been preferred under rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). It has been initiated by a notice of motion and the affidavit of Samwel Shadrack, learned advocate. I am being called upon to extend time within which the applicant can apply for a certificate that there are some points of law which justify an appeal to the Court against the decision of the High Court in PC Civil Appeal No. 94 of 2017.

Before lodging this application, the affidavit is clear, the applicant had filed, which was dismissed (Kulita, J.), Misc. Civil Application No. 657 of 2018 seeking for certificate that some points of law are involved in the

intended appeal against the decision of the High Court in question. Seemingly, the applicant desires to bring the intended application as a second bite. Whether that forum is available in the application of this nature, is relevant in determining this application. I shall consider it henceforward.

At the hearing of the application, Mr. Samwel shadrack, learned advocate, appeared for the applicant. The respondent appeared in person and was not represented. He did not file any affidavit in reply to contest the application.

Before inviting the parties to address me on the substance of the application and having doubted if the application for which the extension of time is sought is within the jurisdiction of the Court, I requested them and more importantly the counsel for the applicant to, simultaneous to the merit of the application, address me on the maintainability of the same on account that the intended application might not be within the jurisdiction of the Court.

The submissions of Mr. Shadrack on the legal issue that I raised was very brief. He submitted that, under rule 45(b) of the Rules, just like in applications for leave to appeal, the Court enjoys jurisdiction to entertain the application at hand, as a second bite, if the same is denied by the High

Court. He submitted further that, such an application needs be lodged within 14 days from the date of the decision of the High Court denying the same. He submitted therefore that, since 14 days within which this application would have been filed expired, the applicant was entitled to commence the instant application.

On the substance of the application, the counsel adopted the facts in the affidavit and submitted that, the delay to file the appeal is associated with the fact that, the applicant was awaiting for a copy of the drawn order of the High Court which was an essential document in the instant application. He clarified that, although the applicant requested for a copy of the order on 31st March, 2020, it was not until on 15th June, 2020 when the same was made available to him for collection. By that time, he submitted, the time within which to lodge the application at the Court had expired. He prayed therefore, that, the application be granted with costs.

On his part, the applicant had no any comment apart from asking the Court to determine the matter as quick as possible since it is an old case.

I have considered the submissions in line with the notice of motion and the affidavit in support of the application. For obvious reason, I shall address the legal issue first. As I said above, the application for which an

extension of time is sought is for certificate on points of law which is condition precedent for an appeal to this Court against the decision of the High Court on a matter originating from primary courts. Such a requirement is imposed by section 5(2)(c) of the Appellate Jurisdiction Act, [Cap 141 R.E. 2019] (the AJA) which provides as follows:

"(c) no appeal shall lie against any decision or order of the High Court in any proceedings under Head (c) of Part III of the Magistrates' Courts Act unless the High Court certifies that a point of law is involved in the decision or order"

Under the above provision, it is clear to me that, the jurisdiction to certify that a point of law is involved in the decision or order of the High Court sought to be appealed against, is exclusively conferred to the High Court, I do not agree with Mr. Shadrack that, this Court traces such jurisdiction under rule 45(b) of the Rules because the said provision is applicable in a situation where leave lies in both the High Court and the Court. It provides as follows:

"(b) where an appeal lies with the leave of the High Court, an 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”;

The leave envisaged in the above provision is that which is covered in section 5(1)(c) of the AJA which provides that:

“(c) with leave of the High Court or of the Court of Appeal, against every other decree, order, judgment, decision or finding of the High Court”.

In **Eustace Kubalyenda v. Venancia Daud**, Civil Appeal No. 70 of 2011 (unreported) the Court dealing with a similar issue, made the following pronouncement which we fully subscribed to:

“It is patently clear, therefore, from the provisions of section 5, this Court and the High Court have concurrent jurisdiction in granting leave to appeal to the Court, to any aggrieved person. But it is the High Court only which has been granted exclusive jurisdiction to certify to the Court that a point or points of law is or are involved in the impugned decision or order in respect of the proceedings falling under Head (c) of Part III of the Magistrates’ Courts Act, CAP 11 R. E. 2002 (the MCA). The said provision of the MCA deal with the appellate and revisional jurisdiction of the High Court in matters originating from primary courts”

In my opinion therefore, as the jurisdiction to certify existence of points of law under section 5(2)(c) of the AJA is exclusively vested in the

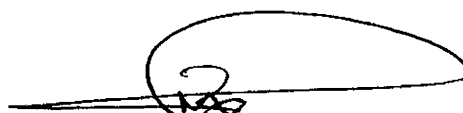
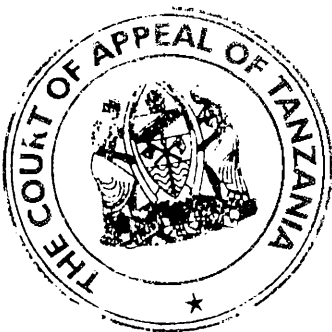
High Court, the intended application for a second bite to the Court is beyond the jurisdiction of the Court. It would follow therefore that, the instant application, in so far as it seeks an extension of time for an action which is not within the jurisdiction of the Court, is untenable in law. The application is thus struck out for being incompetent. Since the issue was raised by the Court on its own motion, I will not give an order as to costs.

Ordered accordingly.

DATED at DAR ES SALAAM this 28th day of March, 2022

I. J. MAIGE
JUSTICE OF APPEAL

The ruling delivered this 01st day of April, 2022 in the presence of Respondent in person and the Applicant is Absent, is hereby certified as a true copy of the original.



J. E. Fovo
DEPUTY REGISTRAR
COURT OF APPEAL