

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

CIVIL APPLICATION NO. 682/11 OF 22021

MUSSA MUSTAFA APPLICANT

VERSUS

HALIDI AHAMAD RESPONDENT

**(Application from the Judgment and Decree of the High Court of
Tanzania
at Kigoma)**

(Mugeta, J.)

**Dated the 25th day of November, 2020
in
DC Civil Appeal No. 11 of 2020**

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RULING

14th & 16th June, 2022

KENTE, JA.:

The applicant, Mussa Mustafa was the appellant in the High Court at Kigoma in DC Civil Appeal No. 11 of 2020. The High Court, dismissed the said appeal for lack of merit. Aggrieved with the said decision, which was delivered on 25th November 2020, the applicant made an application in the same court seeking an extension of time to apply for leave to appeal to this Court. The application (Misc. Land Application No. 8 of 2021) was granted and the applicant was required to file his

application for leave to appeal within 14 days from the date of delivery of the ruling enlarging time.

However, for unexplained reasons he delayed by one day to lodge the application for leave to appeal (Misc. Civil Application No. 12 of 2020), and for that reason, the said delayed application was struck out. Still determined on obtaining leave to appeal, he filed another application for extension of time in the same High Court (vide Misc. Civil Application No. 18 of 2021). In the latter application, the High Court Judge was of the view that since time had already been extended and the applicant failed to honour the time given and since he had failed to account for his inaction, no more extension would be granted to him. The application was consequently dismissed on 20th September 2021.

Undaunted by the various procedural setbacks he had suffered so far, the applicant has applied to this Court seeking what he called an extension of time limited for appealing against the order of the High Court (Mugeta J) dated 25th November 2020 in DC Civil Appeal No 11 of 2020. The application is made under Rule 45A(1)(b) of the Court of Appeal Rules, 2009 ("the Rules") as per the Notice of Motion filed on 19th November 2021 and is supported by an affidavit sworn by the

applicant's learned counsel Mr. Masendeka Ndayanse. The said learned counsel was the prosecuting advocate in Civil Case No. 9 of 2019 at Kigoma District Court, DC Civil Appeal No. 11 of 2020, Misc. Civil Application No. 8 of 2021 and Misc. Civil Application No. 18 of 2021 all at the High Court Kigoma registry and he is hopefully very conversant with the background giving rise to the present application.

When the application was called on for hearing, the applicant deployed the services of Mr. Masendeka Ndyanase who had all along represented him, while the respondent was represented by Sadiki Aiki, learned advocate.

On taking the floor, Mr Ndyanase adopted the material contents of his supporting affidavit which he said should form part of his oral submissions. Going forward he submitted that, the applicant was granted an extension of 14 days to file an application for leave to appeal to this Court. However, as earlier stated, the application for leave to appeal was struck out by the Court for being lodged out of the 14 days granted to him. As if he was challenging the decision of the High Court, it was his submission that, the High Court had erred in determining the limitation period by counting the days from which the application for leave should have been lodged. He argued that the

applicant had not delayed by a day to file this application. In the alternative, he submitted that, even if there had been a delay to file the application for leave to appeal, a single day of delay should not have provoked the court to strike out the application as the parties are close relatives and the court should have taken that opportunity to allow the application and go on to resolve the dispute between parties once and for all to promote good understanding between them. Probed if he could cite any authority to the effect that the law of limitation does not apply in the circumstances where the parties to the dispute are closely related, the learned counsel looked temporarily dumbstruck before he threw in the towel and called it a day for that argument.

In reply, having adopted the respondent's affidavit in reply, Mr. Aliko was of the view that, the application was time barred having been filed beyond the 14 days period from the date of delivery of the ruling refusing the applicant the extension of time, that is in Misc. Civil Application No. 18 of 2021. According to Mr. Aliko, that was because the ruling dismissing the application was delivered on 20th September 2021 and the applicant was notified of the readiness of the certified copies of proceedings and the said ruling on 29th September 2021. The applicant collected the said copies on 15th November 2021 and filed

the present application on 7th December 2021. Counting the days from the date of delivery of the ruling to the date of filing the instant application, the period of 79 days had elapsed hence the delay for 65 days. Mr Aliko further submitted that, despite the absence of the Certificate of delay since there is no proof that the applicant had applied to be issued with copies of proceedings and ruling, there was a lapse of 23 days from the date of receipt of certified copies of proceedings. All in all, the learned counsel was of the view that this application was filed out of the prescribed time contrary to Rule 45A (1) of the Rules.

In his short rejoinder, Mr. Ndyanase conceded to Mr. Aliko's observation that, indeed the reliefs sought in the Notice of Motion are at variance with what is deposed in the supporting affidavit. He submitted that the applicant's intention was to apply to this Court for extension of time by way of a second bite to file application for leave to appeal and not to apply for extension of time to appeal to the Court of Appeal as he did. He further stated that the applicant received copies of certified proceedings on 15th November 2021, on 19th November 2021. Thereafter he prepared the necessary documents for the present application and on 25th November 2021 he filed them and

therefore there was no delay as the application was filed 10 days after receipt of the certified copies from the Registrar of the High Court, Kigoma registry.

Going by the rival arguments advanced by the respective counsel, the most important issue is whether the application is proper before this Court. As stated before, the applicant is moving the Court for extension of time to apply for leave to appeal. He is not before this Court by way of a *second bite* pursuant to Rule 45 A (1)(b) of the Tanzania Court of Appeal rules 2009. But assuming that this was a second bite as alleged by Mr. Ndayanse, then the matter would have fallen, under the above said rule which stipulates that:-

"45A: Where an application for extension of time to;

a) Lodge a notice of appeal;

b) Apply for leave to appeal; or

c) Apply for certificate on 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."

The provision requires the application of the present nature to be lodged within 14 days of the decision of the High Court refusing to

enlarge time. An exception to the Rule is found under sub-rule 2 which stipulates that;

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

Going by the above provision, in the present application, the record is silent as to whether the applicant had applied, by way of a letter, to be supplied with a certified copy of the decision and order. It is on record however that, on 29th October 2021 the Registrar notified the applicant that the copies of ruling and order were ready for collection. Notably, there is no proof of a Certificate for delay issued by the Deputy Registrar under sub-rule (2) which would enable the applicant to benefit the exclusion of the days required for the preparation of the copy of decision and order, as provided for there under. In the absence of such a Certificate, the present application was supposed to be lodged on or before 1st October 2021. It follows therefore that, having been filed on 25th November 2021 which is far beyond the time limit of 14 days, it was time barred.

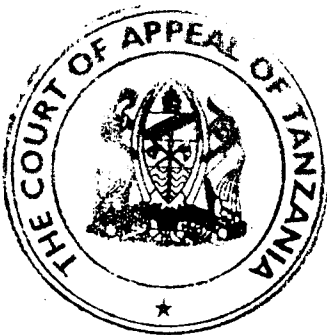
Without recourse to some other grounds advanced by Mr. Aliko in opposition to the application which were equally tenable, I hereby strike it out with costs.

It is so ordered.

DATED at KIGOMA this 15th day of June, 2022.

P. M. KENTE
JUSTICE OF APPEAL

The Ruling delivered this 16th day of June, 2022 in the presence Mr. Daniel Rumanyela holding brief Mr. Masendeka Ndayanse, learned Counsel of the Applicant and Mr. Sadiki Aliko, learned Counsel for the Respondent, is hereby certified as a true copy of the original.




G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL