

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

CIVIL APPLICATION NO. 316/01 OF 2021

ALLY ALLY MBEGU MSILU..... APPLICANT

VERSUS

**JUMA PAZI KOBWA (Administrator
for the Deceased Estate
of the late HADIJA MBEGU MSILU)..... RESPONDENT**

**(Application for extension of time to lodge an appeal out of time from the
decision of the High Court of Tanzania (Dar es Salaam District Registry)
at Dar es Salaam)**

(De-Mello, J)

Dated the 10th day of December, 2019

Civil Appeal No. 127 of 2017

.....

RULING

22nd February, & 13th March, 2023

KIHWILO, JA.

In this application, Ally Ally Mbegu Msilu (the applicant), is seeking orders for the enlargement of time within which to lodge appeals against the decision of the High Court of Tanzania (Dar es Salaam District Registry) at Dar es Salaam in Civil Appeal No. 127 of 2017 as well as enlargement of time within which to lodge an application for certificate on point of law in respect of the decision of the High Court of Tanzania in Civil Appeal No. 127 of 2017. The notice of motion is predicated under

rules 10 and 48 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules). It is supported by an affidavit Affirmed by the applicant.

On the other hand, the respondent, Juma Pazi Koba lodged an affidavit in reply resisting the application and is pressing the Court to dismiss the application because the applicant is merely abusing the Court process at the detriment of the respondent.

Briefly stated, the facts of the matter leading to these omnibus applications can be summarized as follows. The applicant preferred an appeal to the District Court of Ilala in Probate Appeal No. 1 of 2018 before Sachore, RM following the decision of the Ilala Primary Court (Komba, PCM) in Probate Cause No. 20 of 2017 in relation to the administration of the estate of the late Hadija Mbegu Msilu. At the District Court, both parties were unrepresented, they prayed and were granted leave to dispose the matter by way of written submissions. Quite unfortunate, and for an obscure cause, the applicant did not file written submissions as scheduled by the court and therefore, the appeal was dismissed for want of prosecution and the applicant was condemned to costs.

Unhappy with the decision of the first appellate court, the applicant lodged an appeal before the High Court of Tanzania in Civil Appeal No.

127 of 2017 which was cause listed before De-Mello, J seeking to challenge the decision of the first appellant court. Upon listening to the parties, the learned Judge of the second appellate court relying on our previous unreported case of **Director of Public Prosecutions v. Saidi Saleh Alii**, Criminal Appeal No. 476 of 2017 on 10.12.2019 dismissed the appeal but waived costs, considering that the matter is a probate case.

Still disgruntled, on 06.01.2020 the applicant lodged a notice of appeal to the Court seeking to challenge the decision of the second appellate court. It occurred that, the applicant lodged Miscellaneous Application No. 381 of 2020 seeking enlargement of time within which to apply for certificate on point of law against the decision of the High Court in Civil Appeal No. 127 of 2017. After determination of the application on merit the High Court (Ebrahim, J) found out that, the application was devoid of merit and therefore dismissed it with no order as to costs. The applicant lodged a notice of appeal on 30.04.2021 protesting his right and later on 09.07.2021 lodged this omnibus application.

At the hearing of this application, I engaged both parties who were not represented on the propriety of the instant application in its present form, bearing in mind its genesis and the way they were preferred before this Court. Being lay person and unaware of the law they did not serve

any useful purpose to the Court. Whereas, the applicant insisted that the application be granted, the respondent gallantly submitted that the application be dismissed.

I begin by stating the obvious that the instant application is predicated under rules 10 and 48 (1) of the Rules. Whereas rule 10 of the Rules empowers the Court to grant enlargement of time upon the applicant advancing good reasons for his/her failure to do what ought to have been done within the time set forth by the law, rule 48 (1) of the Rules prescribe the manner upon which formal application shall be preferred before the Court. For the sake of clarity, I wish to reproduce rule 48 (1) of the Rules which provides that:

*"Subject to the provisions of sub-rule (3) and to any other rule allowing informal application **every application to the Court shall be by notice of motion supported by affidavit and shall cite the specific rule under which it is brought and state the ground for the relief sought:***

Provided that where an application omits to cite any specific provision of the law or cites a wrong provision, but the jurisdiction to grant the order sought exists, the irregularity or omission can be ignored and the Court may order that the correct law be inserted." [Emphasis added]

Clearly, the above provision refers to an application and not applications and it was never meant to refer to applications. Ordinarily, the provision above does not provide room for a part to lodge two or more applications in one application.

In the matter before us though both two applications relate to extension of time under rule 10 of the Rules, but they emanate from two different scenarios. One emanates from Civil Appeal No. 127 of 2017 which was dismissed, while the other one emanates from Miscellaneous Application No. 381 of 2020 which was equally dismissed. It is also important to stress that, while the former was an appeal, the latter was an application for enlargement of time to apply for certificate on point of law.

Furthermore, the two applications depend on each other, as certificate on point of law has to be secured first before the applicant can seek for extension of time to lodge the appeal out of time in which case the time spent in securing the certificate on point of law will be taken into consideration. It is no wonder the applicant lodged two distinct notices of appeal in respect of the two matters. One notice of appeal was lodged on 30.04.2021 while the other was lodged on 09.07.2021 which is a clear manifestation that the two are distinct and not the same.

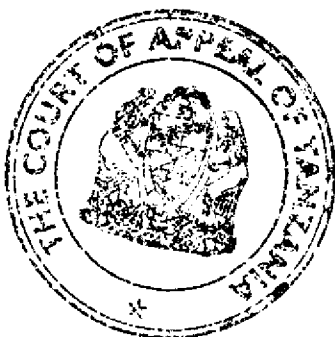
In view of the above circumstances, the two applications ought to have been filed separately instead of lumping them together which makes it an omnibus application. There is a considerable body of case law on this. See, for instance, **Rutagatina C.L. v. The Advocates Committee and Another**, Civil Application No. 98 of 2010 and **Ali Chamani v. Karagwe District Council and Another**, Civil Application No. 411/4 of 2017 (both unreported).

Thus, in the totality of the above and for the reasons explained, I am satisfied that, this application is omnibus, for this reason, I hereby strike out the application.

DATED at DAR ES SALAAM this 8th day of March, 2023

P.F. KIHWELO
JUSTICE OF APPEAL

The Ruling delivered this 13th day of March, 2023 in the presence of the applicant in person and respondent appeared in person, is hereby certified as a true copy of the original.




D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL