

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 592/17 OF 2021

NJOWOKA M.M DEO..... 1ST APPLICANT
AMINA ABDULRAHIM PREMJI 2ND APPLICANT

VERSUS

MOHAMED MUSA OSMAN RESPONDENT

**(Application for Extension of time to file notice of appeal against the
Decision of the High Court of Tanzania (Land Division) at Dar es Salaam**

(Ndika, J.)

dated the 14th day of December, 2015

in

Misc. Land Application No. 276 of 2018

.....

RULING

10th July & 15th September, 2023

MAKUNGU, J.A.:

The applicants intended to challenge the decision of the High Court in Land Case No. 139/2011 handed down by Hon. Ndika,J on 14th December, 2015 whereby the respondent was declared the winner. An attempt to appeal before this Court was unsuccessful when their notice of appeal was struck out on 28/02/2018 for failure to take necessary steps.

Equally unsuccessful was their application before the High Court of Tanzania (Land Division) at Dar es salaam for extension of time to file a notice of appeal out of time so that they appeal to this Court. They have now come to this Court for a second bite so that they be allowed to file a

notice of appeal out of time. The application has been filed under rules 10 and 45A (1) (a) of the Tanzania Court of appeal Rules, 2009, (the Rules).

The application was cause listed to come for hearing on 10th July, 2023. On 2/2/2022 the respondent through Mr. Thomas Rwebangira learned advocate for the respondent lodged a notice of a preliminary objection to the effect that:

- 1. The application is filed out of time.*
- 2. The certificate of delay issued under rule 45A (2) of the Rules is defective both in content and substance.*

At the hearing of this application, Mr. Godwin Anthony Fiso and Mr. Thomas Eustace Rwebangira, learned counsel appearing for the applicants and respondent respectively had to argue the points of preliminary objection first. The undisputed background of the matter is as hereunder.

In Land Case No. 139 of 2011 the High Court entered judgment in favour of the respondent, which the applicants were aggrieved with. Therefore, on 17/12/2015 the applicants lodged their notice of appeal intending to challenge that judgment and decree and applied for necessary documents on the same day. On 28/2/2018, vide Civil

Application No. 133 of 2016 the notice of appeal was struck out for failure by the applicants to take essential steps.

On 16/5/2018 the applicants filed an application for extension of time within which to lodge a fresh notice of appeal, but that application (Misc. Land Application No. 276 of 2018) was dismissed on 28/3/2019. On 29/3/2019 the applicants wrote a letter to request for the documents requisite for filing a second bite application. But then on 9/4/2019 the applicants lodged a notice of intention to appeal the ruling of the High Court in Misc. Land Application No. 276 of 2018 (Maghimbi,J). In pursuance of this other intention the applicants again wrote to request for copies of ruling, drawn order and proceedings.

On 11/4/2019 the applicants wrote yet another letter to apply for a copy of drawn order and certificate of delay in Misc. Land Application No. 276 of 2018 for the purpose of applying for a second bite before the Court. On 25/7/2019 the applicants were notified that the copy of the drawn order was ready for collection; and therefore the Civil Application No. 78/17 of 2020 was filed. On 22nd April, 2021 the said application was struck out by this Court (Hon. Kitusi, JA) for being filed out of time. On 22nd November, 2021 the applicants decided to file this application before the Court.

In his submission, Mr. Rwebangira argued that the application is time barred, and the certificate of delay incurably defective. He further argued that the present application is similar to the previous application No. 78/17 of 2020 which was struck out for it being filed out of time as per rule 45A (1) of the Rules which requires the application for the second bite to be filed within 14 days from the date of decision or as it may be certified by the Registrar excluding days requisite for obtaining the copies of decision and order under rule 45A (2) of the Rules.

On the newly issued certificate of delay, Mr. Rwebangira submitted that is irregular and an abuse of power of the Deputy Registrar. He argued that the applicants having admitted to have received the drawn order on 25/7/2019 thus had in their possession of the requisite documents for the purpose of second bite, and that the Deputy Registrar's letter dated 10th November, 2021 and the certificate of delay dated 10th November, 2021 are adding confusion to the matter. He concluded that this application is *res-judicata* and is not maintainable and this Court is *functus officio* given the ruling and order of this Court in Civil Application No. 78/17 of 2020 by Hon. Kitusi, JA. Based on the authorities cited in his written submission, he prayed the Court to dismiss the application with costs.

In his response, Mr. Fiso submitted that the preliminary objection raised by the learned counsel for the respondent has no merit and should be dismissed with costs. He argued that the applicants received the requested documents on 10th November, 2021 for the purpose of this application. Based on the new certificate of delay issued on 10th November, 2021 this application is within time. The new certificate of delay is valid because the first two issued certificates of delay were invalid and therefore the Deputy Registrar had to issue this new one.

In short rejoinder, Mr. Rwebangira submitted that the new certificate issued on 10th November, 2021 was unnecessary. This matter has taken unnecessary delay and the present application is another sign of endless litigation.

This case originates from the High Court case No. 139 of 2011. It heard the case and found out that the respondent's case has merits. It accordingly declared him the winner. The applicants are aggrieved, they attempt to appeal before the Court but in vain. They also sought an extension of time first in the High Court, they were unsuccessful. They have come to this Court for the second bite, they were also unsuccessful. They have come to this Court again for another second bite.

Mr. Rwebangira argued that this application is *res-judicata* and is not maintainable and this Court is *functus officio* to deal with the same

matter. I totally agree with him that this application is *res-judicata* before me as the similar application was already determined via Civil Application No. 78/17 of 2020 (Hon. Kitusi,JA) in which, he struck out for being out of time.

I have the view that upon the striking out order of this Court, the applicants were supposed to seek for an order extending them with time so as they could file the second bite application under rule 45A of the Rules in order to have their second bite application filed out of the prescribed time. I think the way taken by the applicants looking a fresh certificate of delay so as to inject life into the instant application was inappropriate approach.

In the light of the above view, this application is not maintainable before me. Thus I dismiss it with costs.

Order accordingly.

DATED at DAR ES SALAAM this 13th day of September, 2023

O. O. MAKUNGU
JUSTICE OF APPEAL

The Ruling delivered this 15th day of September, 2023 in the presence of Mr. Thomas Eustace Rwebangira for the Respondent also holding brief of Mr. Godwin Fisso, learned advocate for the Applicants is hereby certified as a true copy of the original.




C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL