

**IN THE COURT OF APPEAL OF TANZANIA**

**AT SUMBAWANGA**

**CIVIL APPLICATION NO. 191 OF 2022**

**BETWEEN**

**FLORENCE MWILINGA.....APPLICANT**

**VERSUS**

**LAITON MWILINGA .....RESPONDENT**

**(Application for Extension of Time to Lodge an Application to Apply for  
a Certificate on a Point of Law out of Time from the Ruling of the  
Resident Magistrate Court of Rukwa at Sumbawanga)**

**(Mutaki, SRM-Ext Jurisdiction)**

**dated the 30<sup>th</sup> day of August, 2021**

**in**

**Misc. Land Application No. 01 of 2021**

**.....**

**RULING**

18<sup>th</sup> & 21<sup>st</sup> September, 2023.

**MURUKE, J.A.:**

This is a second bite application for extension of time to file an application for a certification on a point of law, out of time. Florence Mwilinga filed an application for extension of time to file application for a certificate on point of law, before the Resident Magistrate's court of Sumbawanga (Hon. Mtaki, W.W - SRM-Ext as he then was), however the said application was dismissed for want of merit.

The present application has been preferred under Rule 45A(1)(a) of the Court of Appeal Rules, 2009 (herein after the Rules) and it is supported by the affidavit of the applicant.

Briefly, the applicant, before the Kalambanzite Ward Tribunal sued the respondent for trespass over his land. Having heard the parties, the Ward Tribunal decided in favour of the respondent. Aggrieved with the decision, the applicant successfully appealed to the District Land and Housing Tribunal for Rukwa (DLHT) in Appeal No.109 of 2019. The respondent was dissatisfied with the DLHT's decision, thus appealed to the High Court, where he filed Land Appeal No. 04 of 2020. The said appeal was subsequently transferred to the RM's Court to be heard by Hon. Mtaki, W.W who as stated before, dismissed the appeal. The applicant decided to challenge the RM's Court's decision by way of appeal to the Court. Unfortunately, however, he found himself out of time to file an application for a certificate on point of law. He then filed an application for extension of time in Misc. Land application No.01 of 2021 before the RM's Court-Ext jurisdiction. After hearing the

application, on 30/08/2021 the same was dismissed for want of merit hence this application.

At today's hearing, Mr. Peter Kamyalile, learned advocate represented the respondent who was also present in Court. On the other hand, the applicant was absent despite being served with court process server Mr. Arogast Chitimwa on 7 September 2023 in terms of an affidavit available in the Court records. On the strength of proof of service to the applicant, the respondent counsel pressed for dismissal of the application with costs because of the applicant's nonappearance. On being reminded by the Court that both parties had complied with Rule 106[1] and [7] of Court Rules by filing their respective submissions including the applicant, Mr. Kamyalile changed his prayer and asked the Court to adopt and consider both parties submission filed.

Having examined the record, and gone through the submission filed by both parties, the issues for determination are; **one** whether the application is competent before this Court, and **two** if issue number one is in the affirmative whether the applicant has adduced sufficient cause to warrant grant of extension of time as sought.

This Court is empowered to extend time to apply for a certificate on point of law by way of a 'second bite application' once the same has been denied by the High Court. Such power is derived from Rule 45A of the Court of Appeal Rules, which provides;

***45A.- (1) where an application for extension of time to: -***

- (a) Lodge notice of appeal;*
- (b) Apply for leave to appeal; or*

***Apply for certificate on a point of law is refused by the High court, the applicant may within fourteen days of such decision apply to the Court for extension.*** (Boded for emphasis).

From the cited provision, the limitation period to file a second bite application for extension of time is fourteen days counted from the date of refusal in the first bite by the High Court. This has been emphasized by the Court in a range of decisions, amongst others is the case of **Njowoka M. M. Deo & Another v. Mohamed Musa Osman**, Civil Application No. 78/17 of 2020 (unreported) where it was held that:

*"...an application for a second bite extension of time has to be made within 14 days of the decision of the High Court. Where that cannot be done within 14 days and the reason for that delay turns out to be caused by the delay in being supplied with the requisite documents, then it must be certified by the Registrar."*

(See also the cases of **Wema Moyo vs Monday Mwafongo**, Civil Application No. 299 of 2021, and **Mwajuma Ahmada Mzee (Himidi Ramadhan Mkuya-Legal representative) v. Hadia Ahmada Mzee & 2 Others**, Civil Application No. 104/15 of 2019 (both unreported)).

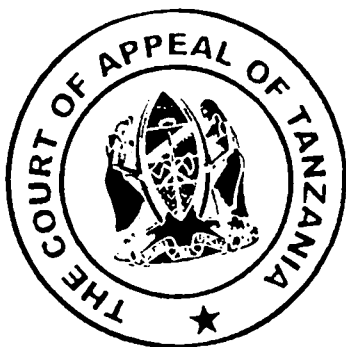
The records reveal that on 30/08/2021 it is when the RM's Court in Misc. land Application No. 01 of 2021 delivered the decision denying the applicant's application for extension of time to file an application for a certification on point of law. The application at hand, was lodged before the sub registry of the Court at Sumbawanga on 02/03/2022, being more than five months after the refusal of the first bite. On records, there is neither a letter applying for records/ ruling nor a Certificate of Delay for the applicant to enjoy the exclusion prescribed under Rule 45A (2) of the Rules.

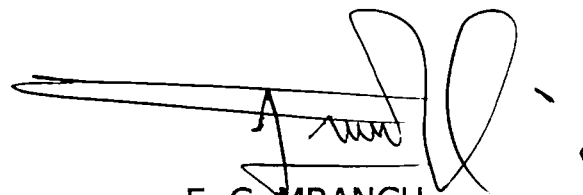
For the foregoing reasons, the application is time barred. The same is thus struck out. In the circumstances of this case, applicant and respondent being blood relative, each party to bear own costs.

**DATED at SUMBAWANGA this 21<sup>st</sup> day of September, 2023.**

**Z. G. MURUKE.**  
**JUSTICE OF APPEAL**

The Ruling delivered this 21<sup>st</sup> day of September, 2023 in the presence of the Applicant in person and Mr. Peter Kamyalile, learned counsel for the Respondent is hereby certified as a true copy of the original.



  
**E. G. MRANGU**  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**