

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

CIVIL APPLICATION NO. 336/08 OF 2023

SOGOKA RAPHAEL.....APPLICANT

VERSUS

FLORENTINA RAPHAEL.....RESPONDENT

**(Application for extension of time to apply for revision against the decision of
the High Court of Tanzania at Mwanza)
(Mgeyekwa, J.)**

**dated the 31st day of April, 2019
in
Miscellaneous Civil Appeal No. 59 of 2019**

.....

RULING

1st & 7th November, 2023.

SEHEL, J.A.:

This is a ruling on an application for extension of time within which to apply for revision of the decision of the High Court of Tanzania at Mwanza (the High Court) dated 31st April, 2019 (Mgeyekwa, J.) in Miscellaneous Civil Application No. 59 of 2019. The application is made under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) and supported by an affidavit sworn to by Sogoka Raphael, the applicant. On the other hand, Florentina Raphael, the respondent herein challenged the application by filing an affidavit in reply deposed to by herself.

It is instructive to point out that the dispute between the parties started at Musoma Urban Primary Court wherein the applicant's objection was dismissed, and that, the respondent was granted letters of administration in respect of the estate of the late Bwire Makoba Raphael. The applicant then successfully appealed in the District Court of Musoma at Musoma. On appeal by the respondent, the High Court overturned the decision of the District Court and restored the Primary Court's decision. Aggrieved by that decision, the applicant appealed to this Court vide PC. Civil Appeal No. 17 of 2012 which was struck out for containing a defective decree.

In pursuit of his right to appeal, the applicant started the process afresh by filing Miscellaneous Civil Application No. 59 of 2019 in the High Court for an extension of time to lodge a notice of appeal and a certificate on a point of law. The High Court partly allowed the application by granting an order for the extension of time but refused to certify that a point of law existed as it observed that the applicant failed to demonstrate the points of law worth determination of this Court. The applicant is determined to challenge the refusal for certification on a point of law by way of revision.

However, upon being late, he filed the present application seeking for extension of time on two grounds stated in the notice of motion, that:

(a) There is point of law which is good cause for extension of time.

(b) The High Court erred in declining to exercise its jurisdiction by failing to certify a point of law which is an essential step to appeal to the Court.

At the hearing of the application, both parties appeared in person, unrepresented. Before the application was heard on merit, the Court invited the parties to address it on whether the application is tenable in law bearing in mind that the law expressly bars a challenge against decision of the High Court refusing to certify existence of a point or points of law to the Court.

The applicant, being a person not conversant with the law, did not have anything to submit on the issue raised by the Court. He simply adopted his notice of motion, the affidavit in support of the application and the written submissions that he had earlier on filed in Court, in terms of Rule 106 (1) of the Rules. He urged the Court to find that the applicant had advanced a good cause in granting the requested extension of time.

Similarly, the respondent did not have anything substantial to address the Court on the issue raised. She adopted the affidavit in reply and the written submissions that was earlier on filed in Court, in terms of Rule 106 (7) of the Rules and argued that the applicant had been dragging her to Court without any justification. She thus beseeched the Court to dismiss the application.

In determining the legal issue posed by the Court, I wish to restate the clear position of the law as stipulated under section 5 (2) (c) of the Appellate Jurisdiction Act, Cap. 141 that requires an appellant, intending to challenge the decision of the High Court exercising the appellate jurisdiction in the proceedings emanating from primary courts which fall under Head (c) of Part III of the Magistrates' Courts Act, Cap. 11, to obtain a certificate on a point of law from the High Court.

In the present application, the applicant obtained a certificate on a point of law and filed an appeal to the Court vide PC. Civil Appeal No. 17 of 2012 which was struck out. As earlier on stated, the applicant went back to the High Court to start the appeal process afresh. He sought an extension of time and a fresh certificate on a point of law. The High Court partly

allowed the application by granting the extension of time but declined to certify on existence of a point of law. As such, the applicant has now come to this Court seeking an extension of time to apply for revision against the decision of the High Court refusing to issue a certificate on point of law. The application is made under Rule 10 of the Rules which provides:

"The Court may, upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or tribunal, for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended."

The above provision of the law requires a party seeking an extension of time to advance good cause for the Court to exercise its discretionary power. The term "*good cause*" is not defined in the Rules. In assessing whether there is "*good cause*", each case has to be considered and determined on its own peculiar facts and circumstances – see: the decision of this Court in the cases of **Yusufu Same & Another v. Hadija Yusufu**, Civil Appeal No. 1 of 2002 (unreported).

The circumstances in the present application are such that, the applicant applied for an order of extension of time to apply for revision of the order of the High Court refusing to certify existence of a point or points of law to the Court. It is trite law that the decision of the High Court refusing to certify a point or points of law is not appealable. We stated this position in the case of **Eustance Kubalyenda v. Venancia Daud**, Civil Application No. 70 of 2011 [2012] TZCA 89, wherein the appellant appealed against the decision of the High Court which refused to certify on a point of law and the Court said that:

*"...when it comes to the granting of a certificate on a point of law for a third appeal, the legislature made it the exclusive preserve of the High Court. On this, there is no concurrent jurisdiction and accordingly no room for a second bite. **The legislature, therefore, wanted the refusal order of the High Court to be final.** Under the scheme of the [the Appellate Jurisdiction Act, Cap. 141 (the Act)], **this Court has no jurisdiction to grant a certificate on a point of law or to compel or direct the High Court to do so...** rejection by the High Court of an application under*

section 5 (2) (c) of the Act is final and no appeal against it lies to this Court". [Emphasis added]

I entirely subscribe to the above position of the law, and I wish to add that, since it is only the High Court which is vested with exclusive jurisdiction to certify to this Court that a point (s) of law exists, the Court cannot by way of revision or appeal certify to itself that a point or points of law do exist.

The above being the position of the law, the ensuing question is whether the Court can grant an extension of time to file an application for revision which is barred by law. The answer to this question is found in the case of **Robert Kadaso Magezi v. The Republic**, Criminal Appeal No. 476 of 2023 [2023] TZCA 17504 (18 August, 2023; TANZLII) where the Court said:

"It is quite perturbing that High Court granted an extension of time to lodge an appeal that is expressly barred by statute. In our respectful view, the grant of extension was clearly an exercise in futility as the appellant had no right of appeal against the interlocutory decision in issue. We had expected the High Court to have directed its mind

to that aspect, which, by any yardstick, ought to have been apparent on the record”.

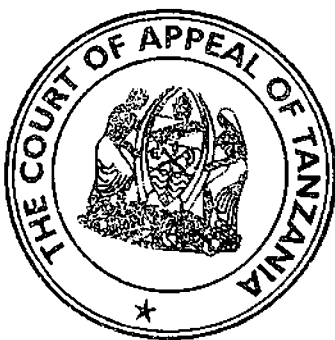
In the same vein, granting the present application will be an exercise in futility. For this reason alone, I decline the applicant’s invitation to extend time to file an application for revision. Accordingly, the application is dismissed with costs.

DATED at **Mwanza** this 6th day of November, 2023.

B. M. A. SEHEL

JUSTICE OF APPEAL

The Ruling delivered this 7th day of November, 2023 in the presence of applicant in person, unrepresented, and respondent in person, unrepresented, is hereby certified as a true copy of the original.




C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL