

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

CIVIL APPLICATION NO. 221/02 OF 2020

JUMA MTUNGIREHE APPLICANT

VERSUS

**THE BOARD OF TRUSTEES OF THE TANGANYIKA
NATIONAL PARKS t/a TANZANIA NATIONAL PARK RESPONDENT**

**(Application for Extension of Time to file Notice of Appeal to the Court of
Appeal as a Second Bite from the High Court of Tanzania at Arusha)**

(Massengi, J.)

dated the 19th day of January, 2015

in

Misc. Civil Application No. 299 of 2014

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RULING

2nd December, 2022 & 13th March, 2023

MASHAKA, J.A.:

This application brought by notice of motion under rule 10 and 45 (b) of the Tanzania Court of Appeal Rules, 2009 (the Rules) by the applicant is seeking for extension of time within which to lodge notice of appeal out of time after the same had been refused by the High Court. However, prior to the commencement of hearing of the application on merit, Mr. Peter Musetti, learned Senior State Attorney assisted by Mr. George Dalali and Ms. Rosina Kway, learned Senior State Attorney and State Attorney respectively, representing the respondent informed me that the application is time barred. They raised a preliminary point of

objection that the application contravenes rule 45 A (1) (a) of the Rules which is based on whether the application was lodged within the prescribed period of fourteen days.

As it is the practice of the Court, I sought first to dispose of the preliminary objection. I therefore invited the parties to address me on that point.

In his submission, Mr. Musetti argued that Civil Application No. 221/02 of 2020 is an application for second bite after the High Court had refused to grant the applicant extension of time in Misc. Civil Application No. 299 of 2014 dated 19th January, 2015 which is annexure JMA '6' to the notice of motion and supporting affidavit.

He argued further that rule 45 A (1) (a) of the Rules, provides that where an application for extension of time to lodge a notice of appeal is refused by the High Court, the applicant may within fourteen (14) days apply to the Court for extension of time. He contended that the second bite application was filed on 05th November, 2019 which is almost 3 years and 7 months since the High Court denied the applicant extension of time to lodge notice of appeal.

To bolster his stance, Mr. Musetti referred to the case of **Mwajuma Ahmada Mzee v. Hadija Ahmada Mzee and 2 Others,**

Civil Application No. 104/15 of 2019 (unreported) which held that a second bite application has to be lodged within 14 days as mandatorily prescribed under rule 45 A (1) (a) of the Rules. He also cited the case of **Silaha Watson v. Kulwa Nassoro**, Civil Application No. 96/17 of 2020 (unreported) where the Court emphasized on the strict adherence to rule 45 A (1) (a) of the Rules.

Further, he argued that the 14 days offered under rule 45 A (2) of the Rules can be considered in exclusion of the time used for the preparation of a copy of the decision in which the Registrar has to certify the excluded days upon issuing a certificate of delay. However, he contended that there is no certificate of delay in the record to support the application.

Mr. Musetti concluded that the application lodged before the Court as second bite on 05/11/019 after the impugned ruling of the High Court in Civil Application No. 299 of 2014 dated 19th January, 2015, the application is incompetent for being time barred and prayed it to be dismissed.

In reply, Mr. Mtungirehe who entered appearance in person, he initially argued that the application was not time barred as raised by the respondent. He expanded that before Hon. Massengi, J he had filed an

application for extension of time to lodge the notice of appeal out of time. As averred at paragraphs 10, 11, 12 and 14 of the applicant's affidavit, after the application was denied, he filed several applications which were either struck out or withdrawn. He received the copy of the impugned ruling and order dated 16th March, 2015.

Eventually, he conceded that, as he was acting on advice from different persons, he had no certificate of delay issued by the Registrar to exclude the days for preparation of a copy of the ruling and order. He thus implored me to consider this application by finding the preliminary objection is lacking merit, overrule it and grant him extension of time to file a second bite application out of time.

In conclusion, he conceded that he was late because he did not know the procedure on how to file an application for second bite and he was facing financial constraints. As such, he urged me to consider Article 107 A (2) (e) of the Constitution of the United Republic of Tanzania, 1977 to administer justice.

In rejoinder, Mr. Musetti reiterated his submission in chief that the application was filed without any certificate of delay issued by the Registrar, hence it is time barred and the Court has no jurisdiction to

determine it. Thus, praying the objection to be sustained and the application to be dismissed.

It is settled law that, the jurisdiction to adjudicate any matter is a creature of statute and any objection in that regard is a point of law which can be raised at any stage. Given the fact that the point of law raised by the respondent touches on the issue of jurisdiction of the Court which goes to the root of the application which is fundamental in determining its competence whether it was filed within the time limits of the law - see the case of **Fanuel Mantiri Ng'unda v. Herman Mantiri Ng'unda and 20 Others**, Civil Appeal No. 8 of 1995 (unreported).

I have carefully considered the submissions by both parties and the record of this application. I wish to state that the law is settled where a second bite application for extension of time has to be filed within fourteen days of the impugned decision delivered by 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 essential documents, then it must be certified by the Registrar. Under rule 45 A (1) and (2) of the Rules it provides that: -

- "(1) Where an application for extension of time to*
- (a) lodge a notice of appeal;*
 - (b) apply for leave to appeal; or*
 - (c) apply for a 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 of time.*
- (2) 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 the decision and the order."*

This application is for extension of time to file a notice of appeal out of time after the High Court denied to grant extension of time. It has been preferred under rule 10 of the Rules. The supporting affidavit and shows that the applicant's first attempt to seek extension of time by the High Court failed vide a Ruling dated 19th January, 2015. This, therefore, is a second bite application although the notice of motion instituting it has not cited rule 45 A (1) and (2) of the Rules.

By virtue of rule 45 A (1) of the Rules, this application ought to have been filed within 14 days after the refusal by the High Court. The order of the High Court refusing the application was dated 19th January, 2015, therefore the second bite application was supposed to be filed at the latest by 23rd January, 2015. As it was filed on 5th November, 2019, it was filed out of time. See, **Mwajuma Ahmada Mzee (Hamidi Ramadhani Mkuya – Legal Representative) v. Hadija Ahmada Mzee & 2 Others**, Civil Application No. 104/15 of 2019 (unreported). In the event, I sustain the point of preliminary objection.

Consequently, I find the application incompetent for being filed out of time and I accordingly strike it out.

Regarding costs, I make no order as to costs because this application originates from a labour dispute.

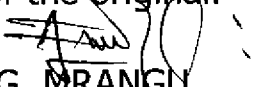
It is so ordered.

DATED at DAR ES SALAAM this 9th day of March, 2023.

L. L. MASHAKA
JUSTICE OF APPEAL

The Ruling delivered this 13th day of March, 2023 in the presence of applicant present in person via video link from Arusha and Mr. George Mayunga Dalali, learned Senior State Attorney for the Respondent is hereby certified as a true copy of the original.




E. G. MRANGU
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL