

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISC CIVIL APPLICATION NO. 134 OF 2010.

TUKAE RAJABU.....APPLICANT

VS

CHIKU YUSUFU.....

MAKINI YUSUFU.....

TABU YUSUFU.....

....RESPONDENTS

Ruling

Date of last Order: 03-02-2011

Date of Ruling: 07-02-2011

JUMA, J.:

By a chamber application filed on 8 October 2010 the applicant Tukae Rajabu is praying for extension of time to enable him to request the leave of this court to appeal to the Court of Appeal of Tanzania. To move this court the applicant employed section 11-(1) of the **Appellate Jurisdiction Act, Cap. 141** and section 95 of the **Civil Procedure Code, Cap. 33**. The application is supported by an affidavit taken out by the applicant wherein he has also disclosed the reasons behind his delayed application for leave to appeal to the Court of Appeal of Tanzania.

The Respondents manifested their opposition to the application by filing a counter affidavit. On 21st December 2010 the Applicant filed a reply to the counter affidavit together with a notice of preliminary objection contending that the counter affidavit should be struck out because it is not attested by the 2nd Respondent as required by the law. That it is similarly defective because its jurat clause is not dated. Respondents' counter affidavit was drawn on their behalf by the Legal and Human Rights Centre (Legal Aid Clinic, Kinondoni).

When the preliminary objection came up for hearing on 3rd February 2011 the Applicant was represented by Mr. David A. Ntonge whereas Makini Yusufu (2nd Respondent) and Tabu Yusufu (3rd Respondent) represented themselves. 2nd Respondent informed this Court that the 1st Respondent (Chiku Yusufu) is deceased. Respondents' counter affidavit was drawn by the Legal and Human Rights Centre. Unfortunately, no Advocate from the Legal and Human Rights Centre was present to explain the flaws and defects which are apparent on the face of the counter affidavit. Mr. Ntonge on behalf of the Applicant agreed to abandon his notice of objection and proceed with the hearing of the application.

Submitting on the application for extension of time to file an application for leave, Mr. Ntonge pointed out that the judgment against which the applicant wishes to appeal was delivered by Massengi, J., on 3 August 2010. On 12 August 2010 the

Applicant wrote to request for a copy of the Judgment and Decree and also filed his intention to appeal. Despite immediately applying for copies of judgment and decree, these were supplied later on 27 September 2010 because the presiding Judge who was supposed to sign them was away on leave. In their replying submissions, the 2nd and 3rd Respondents opposed the application contending that it was a delaying tactics on the part of the applicant.

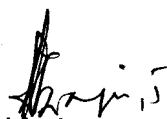
I have considered this application in the light of reasons which the parties have advanced in their submissions to explain what delayed an application for leave to appeal to the Court of Appeal of Tanzania. On the same day when Massengi, J. delivered the judgment Mr. David A. Ntonge, learned Advocate for the applicant wrote to the Registrar of this court to request a copy of judgment of PC Civil Appeal No. 17 of 2010. It is also apparent from records that the learned Advocate sent another reminding letter dated 2 September 2010, this time to the Judge-in-Charge. Copies of judgment and decree against which the Applicant intends to appeal were finally supplied on 27 September 2010. Eleven days later on 8th October 2010 the applicant filed this application for extension of time.

With the presiding Judge away on leave requisite documents for purposes of appeal could not be signed in time. Attempts by the applicant to have these documents signed by another Judge did not bear fruits for purposes of his lodging his application for leave of this Court. From the foregoing, it is clear that the

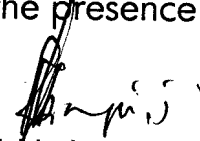
Applicant has advanced sufficient reason why he could not have applied earlier for leave of this court to appeal to the Court of Appeal.

The Applicant is hereby granted 14 days within which to file an application for leave to appeal to the Court of Appeal of Tanzania against the decision of this Court (Massengi, J.) dated 3rd August. For ends of justice, each party shall bear its own costs.




I.H. Juma
JUDGE
07-02-2011

Delivered in Court Chambers in the presence of:


I.H. Juma
JUDGE
07-02-2011