

**IN THE HIGH COURT OF TANZANIA**  
**AT DODOMA**

**MISC. CIVIL APPLICATION NO. 7 OF 2012**

*(Originating from Misc. Civil Application No. 43 of 2009)*

**MOHAMED SALIMINI.....APPLICANT**

**VERSUS**

**JUMANNE MAPESA.....RESPONDENT**

**RULING**

**11/9/2012 & 22/11/2012**

**KWARIKO, J.**

Formerly, the applicant herein unsuccessfully filed an application Misc. Civil Application No. 43 of 2009 in this court before Hon. Shangali, J. for extension of time to file an appeal against the decision of the district court of Dodoma vide Civil Case No. 27 of 2003. He was aggrieved by that ruling hence filed this application for leave to appeal to the Court of Appeal of Tanzania against the same. The application has been brought in terms of section 5(1) (c) of the Appellate Jurisdiction Act Cap. 141 R.E. 2002 and Rule 45 (a) and 46 of the Tanzania Court of Appeal Rules, 2009 and any other enabling provisions of the law. This application has been supported by the affidavit of one MASUMBUKO ROMAN MAHUNGA LAMWAI, advocate of the applicant.

On the other hand the respondent through the services of Messrs. Rweyongeza & Co. Advocates filed a counter-affidavit which has been sworn by DEUS J. NYABIRI, Advocate. Also, the respondent's counsel filed a notice of preliminary objection on the following points of law.

1. **THAT**, the application is legally incompetent for contravention of the provisions of Rule 45 (a) of the Court of Appeal Rules, 2009.
2. **THAT**, the Affidavit in support of the chamber summons is defective and incompetent for contravention of the provisions of Order XIX Rule 3 (i) of the Civil Procedure Code Cap. 33 of R.E. 2002.
3. **THAT**, the jurat for attestation is wrongly dated making the Affidavit defective in law.

The counsel of the parties agreed and the court allowed the preliminary objection to be argued by written submissions which have been duly filed.

I have read and understood the counsel's submissions and will refer them whenever need arises. The issue to be decided thus is whether this application has been filed in contravention of the law.

Firstly, I agree with both parties that the date of filing of this application has been endorsed by the court registry to be 04/3/2012 which is clearly before the date of ruling on 9/3/2012. As to how this date had been endorsed only the applicant and the registry officer should know. And the date the District Registrar endorsed the chamber summons on 29/6/2012 has no any bearing as far as time of limitation is concerned. The date of endorsement by the Registrar does not signify that it is the date the document has been filed. This endorsement comes later after the document is filed and endorsed by the registry officer. In this case it ought to have been the date which is indicated as 4/3/2012. But then on, 4/3/2012 the ruling intended to be impugned had not been delivered and one cannot impugn a decision whose outcome he/she has not known. Thus, the date 4/3/2012 has no effect in this respect since no any evidence has been brought to explain the same. Actually, the applicant ought to have sought evidence from the court registry to explain this said date.

Thus, as to when the application was filed I have read the submissions by the counsel for the parties. As already explained herein above we cannot regard 29/6/2012 to be the date of filing as Mr. Nyabiri learned counsel contended.

On the other hand Mr. Lamwai learned Advocate for the applicant insists that the date of filing is 27/3/2012 which was two days before the expiry of limitation period. This is so because they say a copy of the ruling had been issued on 14/3/2012 as shown in the receipt.

With due respect to the learned counsel for the applicant it is the Notice of Appeal which is on record that was properly filed on 27/3/2012 when court fee was paid vide Exchequer Receipt No. 41591141. The record shows further that the present application was filed on 10/4/2012 when court fee was paid vide Exchequer Receipt No. 41591155. In law a date of filing of any document is on the date court fee is paid. Thus, this application was filed on 10/4/2012. This was outside fourteen (14) days as provided under Rule 45(a) of the Court of Appeal Rules, 2009 within which this kind of application should be filed. The law says;

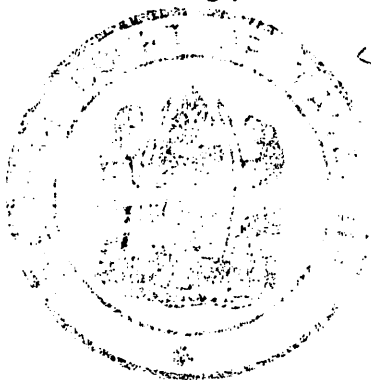
**"45. In Civil Matters –**

- (a) ***Where an appeal lies with the leave of the High Court, application for leave may be made informally, where the decision against which it is desired to appeal is given, or by chamber summons according to the practice of the High Court, within fourteen days of the decision*** [Emphasis mine]

Thus, this application was legally filed out of time. Even if the 27<sup>th</sup> March, 2012 is taken to be the date this application was filed still it was out of time as fourteen (14) days provided in law had elapsed i.e from 9/3/2009 to 27/3/2012 it was about

seventeen (17) days. It has been contended that a copy of the ruling was issued on 14/3/2012 and thus limitation period started to run on that date. With due respect to the learned counsel for the applicant this excuse is not automatically accepted. There must be an application for extension of time where this reason could be advanced and considered by the court. It is not the duty of the court to, *suo motu*, perform the obligation of the parties. And even if the court considers and accepts that the copy of the ruling was obtained on 14/3/2012, the question to be asked is why this application was filed about a month later on 10/4/2012? That is why I said this reasoning could better be considered in an application for extension of time to file the application for leave to appeal to the Court of Appeal of Tanzania where parties would get time to submit and counter-submit before the court decides.

Having been found that this application was filed out of time, I do not see why I should labour to discuss the remaining two points of preliminary objection. Therefore, the first point of preliminary objection is upheld. Consequently, the application is thus incompetent before this court and it is hereby struck out with costs to the respondent. It is ordered accordingly.

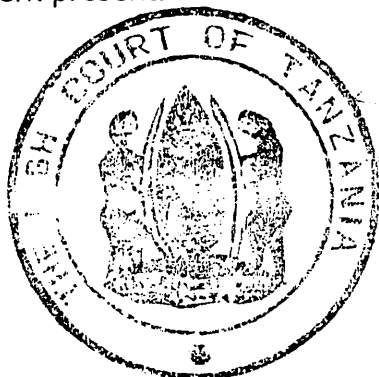


  
(M. A. KWARIKO)

JUDGE

22/11/2012

Ruling delivered today in court in the presence of the Applicant. Mr. Kidumage Advocate holding brief for Mr. Nyabiri Advocate for the Respondent present. Ms. Judith court clerk present.



  
(M. A. KWARIKO)

JUDGE

22/11/2012  
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