

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

**MISCELLANEOUS CIVIL APPLICATION NO. 823 OF 2016
(Arising from the decision of the High Court of Tanzania at
Dar es Salaam in Miscellaneous Civil Application No. 88 of
2016)**

SAID HAMIS NGUYAHAMBIAPPLICANT

Versus

SIFA BAKARI.....RESPONDENT

RULING

B.R. MUTUNGI, J:

The applicant herein is seeking for the following orders;

- 1. That this Honourable court be pleased to grant an order for leave for which the applicant can file an appeal to Court of Appeal of Tanzania.*
- 2. Costs to be granted.*
- 3. Any reliefs this court may deem fit to grant.*

The application is pursuant to a chamber summons filed under Rule 45 and 49 of the Court of Appeal Rules, 2009, supported by an Affidavit affirmed by the applicant.

In the said Affidavit, the applicant deponed that he was the applicant in Miscellaneous Civil Application No. 88 of 2016. He goes further to aver that he had served the respondent accordingly but did not get any response from the respondent.

The foregoing notwithstanding, the court did order the application be disposed of by way of written submission and a filing schedule recorded. The applicant did file his written submission as ordered but the respondent did not bother to file a reply. The applicant made efforts to inquire from the court and was informed the respondent had not filed any reply. The court proceed to deliver its ruling on 22/7/2016. Upon receipt of a copy of the ruling, it came to the knowledge of the applicant that, the ruling had

incorporated the respondent's submissions and the court had ruled in the respondent's favour. In view of the foregoing this is the reason he has now come before this court seeking for leave to appeal against the said ruling.

The respondent in his counter affidavit apart from opposing the application at hand, he has raised a preliminary objection on two points of law to the effect that, **One**; the application at hand is time barred. **Two**; this honourable court is improperly moved.

On 21/2/2018 when the matter was called for hearing of the preliminary objection raised, the applicant appeared in person and defended himself while Mr. Masinga learned Advocate appeared for the respondent. Under those circumstances the applicant being a layperson, the honourable court was of the considered view that it would be appropriate the matter be disposed of by way of written submissions. In view thereof, the court made the scheduling

order in which the respondent was supposed to file his written submission in support of the said points of law on or before on 6/3/2018; the applicant to file his reply on or before 20/3/2018 and the rejoinder to be filed on 27/3/2018.

However, it would appear that, only the respondent has complied with the above scheduling order. He filed his written submissions within time as ordered through the legal services of Mr Joseph Masinga from Juris Consults Law Chamber while the applicant did not file his. This notwithstanding cannot prevent the court from determining the preliminary objection raised on merits as I hereunder do.

The respondent in support of the first limb of the preliminary objection submitted that, the decision in Miscellaneous Civil Application No. 88 of 2016 was delivered on 22/7/2016. An application for leave to appeal has to be filed within 14 days from the date of the decision as per Rule 45 (a) of the Court of Appeal Rules (supra). Glancing

through the record the applicant filed the instant application on 30/11/2016 which was almost 130 days from the date of the decision. It follows by then it was already out of time.

On the second limb of the preliminary objection, the respondent submitted, the court has not been properly moved. The respondent argued, the applicant has only cited Rule 45 and 49 of the Court of Appeal Rules (supra) without specifying which sub section in Rule 45 is relied on. The respondent was of the view the applicant has failed to cite the specific sub paragraph of the law. He referred this court to the case of **BAHADIR SHARIF RASHID AND 2 OTHERS VERSUS MANSOUR SHARIF RASHID & ANOTHER, CIVIL APPLICATION NO. 127 OF 2006 (CAT-DSM) (UNREPORTED)** which held the same renders the application incompetent.

In his concluding remark, the respondent prayed the application at hand be struck out with costs.

At this juncture the question is whether the raised preliminary objection has merits or otherwise.

Starting with the first limb of the preliminary objection it is vividly clear that, the decision intended to be challenged before the Court of Appeal by the applicant (Miscellaneous Civil Application No. 88 of 2016) was delivered on 22/7/2016. It is further revealed the instant application was filed on 30/11/2016 which is approximately four (4) months later from the date of the said decision.

As if not enough, the applicant in his affidavit avers he was supplied with the copy of the ruling on 28/7/2016. Be as it may, the applicant's affidavit is silent as to why he took so long to file the application at hand late (on 30th /11/201).

Rule 45 (a) of the Court of Appeal Rules states as follows;

'45. *In civil matters-*

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

In my settled mind, it is obvious the applicant had filed the application out of time contrary to the dictates of Rule 45 (a) of the Court of Appeal Rules (*supra*). In the event I sustain the first limb of the preliminary objection.

Regarding the second limb of the preliminary objection, the respondent insists the applicant has not cited the specific sub paragraph of the enabling provision. Rule 45 has two sub-paragraphs (a) and (b). The applicant has failed to specify which sub paragraph is relevant to support his application.

The law relating to non-citation of the subsection or subparagraph is well settled in our civil jurisprudence. In the case of **EDWARD BACHWA & 3 OTHERS VERSUS THE AG AND ANOTHER, CIVIL APPLICATION NO. 128 OF 2006 (CAT-DSM) (UNREPORTED)** at page 7 it was held;

*'...that wrong citation of the law, section, sub-sections and/ a paragraphs of the law or **non citation of the law will not move the court to do what it is asked and renders the application incompetent.**'* [Emphasis is mine]

The above considered, I find the court has not been properly moved by the applicant. It follows the application is incompetent before the court and is to be struck out.

In the final analysis, the applicant's application is found to be hopelessly out of time and not properly before the court for non – citation of the sub - paragraph. In view thereof the result being that, the application is struck out with costs.

It is so ordered.


B.R. MUTUNGI

JUDGE

11/4/2018

Read this day of 11/4/2018 in the absence of both parties
dully served.

Right of Appeal Explained.


B.R. MUTUNGI

JUDGE

11/4/2018