

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
AT BUKOBA**

CIVIL APPLICATION NO. 17 OF 2017

*(Arising from Matrimonial Appeal No. 3 of 2016 of the High court of URT
Bukoba Registry)*

YUSSUPH ISSA-----APPLICANT

VERSUS

VALERIA JOSEPH-----RESPONDENT

RULING

3/9/2018 & 3/9/2018

MLACHA, J.

The Applicant Yussuph Issa file an application against the Respondent Valeria Joseph. The Application is made under **Section 2 (1) of the Judicature and Application of Laws Act Cap. 358 R.E. 2002, Section 11 (1) of the Appellate Jurisdiction Act Cap. 141 R.E. 2002 and Rule 44 of the Court of Appeal Rules.** It seeks the following orders.

“1. That time be extended for the applicant to file application for LEAVE to file a notice of appeal from the judgment of the High Court of Tanzania at Bukoba give (sick) on 18/11/2016 in Matrimonial Appeal No. 3 of 2016 out of time.

2. That the leave be granted to the applicant to file a Notice of appeal from judgment of the High court in Matrimonial Appeal No. 3 of 2016 out of time.

3. That an order that the costs of and incidental to this application abide by the result of the said application”.

The application is supported by the affidavit of the applicant which has some annexures. The reasons behind the application are contained in the affidavit; that the applicant never knew the decision of this court (Bongole, J.) at an early stage. That he knew it at the time of execution. When he was invited to address the court at the hearing he could not address the court to his affidavit. He only said that he wanted to go to the Court of Appeal.

When I asked the respondent to respond to the applicant's submission she responded in a layman's view saying that she has no problem with the appeal only that the applicant must get out of the land during the appeal period.

Upon my perusal of the annexures attached to the affidavit, I have come across the decision of this court which was made ex parte. So the applicant seeks to extend the time so that he can go to the Court of Appeal to appeal against this decision. The question now is whether the decision is

appealable so as to give legal justification to the present application. I think it is not. The judgment being ex parte cannot give rights of appeal. I will try to show this.

Order XXXIX rule 17 of the Civil Procedure Code, cap 33 R.E.2002 gives the court power to hear appeals ex parte if the Respondent who was duly served does not appear. The respondent in this application could not appear on the date when the appeal was set for hearing. The court heard the appeal ex parte and issued the judgment which is also headed "*Ex parte Judgment.*" The remedy for an aggrieved party does not lay to the Court of Appeal. The remedy was to return to this court under Order XXXIX rule 21 to seek to set aside the ex parte judgment and re-hear the appeal. It follows that the present application is misconceived and illegally lodged. It cannot be left to stand. I proceed to struck out it with costs. Order accordingly.

A handwritten signature in blue ink, appearing to read 'L.M. Mwachia', with a stylized flourish extending to the right.

L.M. Mwachia,

Judge

3/9/2018

Court: Ruling delivered in the presence of the applicant and absence of the respondent who is to be notified.

Right of appeal explained.



L.M. Mlacha,

Judge

3/9/2018

