

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

MISC. CIVIL APPLICATION NO: 701 OF 2017
(Arising from Civil Appeal No. 90 of 2015)

CHARLES SANGABO.....APPLICANT

VERSUS

FAUSTINE FIDELIS.....1ST RESPONDENT

JAMES BURA2ND RESPONDENT

RULING

Date of last Order: 24th April 2018

Date of Ruling: 04th April 2018

SAMEJI R.K, J.

On 3rd November 2017, the applicant has lodged this Application praying for the following orders:-

- (a) extension of time within which to give notice of appeal against the decision of the High Court of Tanzania at Dar es Salaam (Hon. Muruke J) dated Sept 2017;*

(b) extension of time within which to apply for an order granting leave to appeal;

(c) granting leave to appeal to the Court of Appeal; and

(d) costs of the Application.

The Application is brought under the provisions of sections 11 (1) and 5(1) (c) of the Appellate Jurisdiction Act, Cap.141 [R.E 2002]. The Application is accompanied by an Affidavit sworn by the advocate for the applicant one VITALIS PETER.

The reasons for delay advanced by the applicant as seen in his Affidavit is that, the Judgment of the High Court intended to be appealed against was delivered on 22nd September 2017 was in favour of the applicant and there were no reasons whatsoever for them to file notice of appeal. However, later on after receiving the copy of the Judgement, it came to the applicant's knowledge that the typed Judgment which was supplied to the parties was different from the previous Judgment pronounced and delivered by the Court in their presence. Hence, they decided to file this Application.

On the other hand, the respondent opposed the application and filed a counter affidavit sworn by 1st respondent FAUSTIN FIDELIS.

On the date set for the hearing of the Application Mr. Vitalis Peter, the learned Counsel appeared for the applicant, while the 1st Respondent appeared in his personal capacity, but informed the Court that he is under the legal aid services from the Legal and Human Rights' Centre. As such, it was mutually agreed that the Application be disposed of by way of written submission whereby the Court set out a filing schedule which parties have duly complied with.

Submitting in support of the Application, Mr. Vitalis stated that, the Judgment which was pronounced by Hon. Muruke, J on 22nd September 2017 and the copy of Judgment which was supplied to the parties is different. That, the Judgment pronounced was in favour of the appellant, but when the typed Judgment was supplied to the parties was not the same. He submitted further that, since the pronounced Judgment before the parties was in favour of the appellant, he noted that there was no reason to file the notice of appeal. He argued further that, if the extension of time will be granted, he intends to argue before the Court of Appeal

that, the Court below did not show when or where the applicant was served with the summons and that, the suit was time barred for it being based on tort and time limitation is three years.

With reference to the omnibus application, which the Court raised *suo moto* and requested the parties to address the same in their submission, Mr. Vitalis argued that, filling of three prayers in one Application at once, is not bad at law and the same is allowed. To buttress his position he referred to the cases of **Tanzania Knitwear Ltd Vs. Shamshudin Esmail** (1989) TLR 48 and **MIC Tanzania Limited Vs. Minister for Labour and Youth Development and Another**, Civil Appeal No. 103 of 2004 CAT (unreported), whereby the latter case stated inter alia that;

"In my opinion the combination of the two applications is not bad at law. Courts of law author multiplicity of proceedings. Courts of law encourage the opposite".

Resisting the Application, the 1st Respondent argued that the applicant has not shown sufficient cause for delay to warrant this Court to grant leave to file notice of appeal. For clarity, he cited the case of **Benedict Mumelo**

Vs. Bank of Tanzania, Civil Appeal No 12/2002 CAT DSM (unreported)

where it was stated that:-

"it is a trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may be granted where it has been sufficiently established that, the delay was with sufficient cause"

It is the 1st respondent's submission that, the applicant has failed to show good cause for delay to warrant the Application before the Court to be granted. He said, the applicant has also failed to show that there is overwhelming chances to succeed if the leave sought is granted.

Having perused the record of the Application and the submissions made by the Counsel for the parties, I will now direct my mind in addressing the merit of the Application before this Court. As I had since noted that the Application before me is an omnibus and I have since requested the parties to address the Court on the same, I will start with that issue, because it deals with the competence of the Application before me. Now, the issue is *"whether the applicant's Chamber Application is properly filed before this Court or not"*.

As it was indicated above the applicant's Application herein contains three distinct prayers. Therefore, the main question which needs to be determined by this Court is whether it was proper for the applicant to include all those three distinct prayers in one application, (omnibus).

I am alive to the fact that, when submitting on this issue, Mr. Vitalis argued that, filling of all three prayers in one Application at once, is not bad at law and he referred to the cases of **Tanzania Knitwear Ltd Vs. Shamshudin Esmail** (1989) TLR 48 and **MIC Tanzania Limited Vs. Minister for Labour and Youth Development and Another**, Civil Appeal No. 103 of 2004 CAT (unreported). I do appreciate this position, but I should also remind Mr. Vitalis that prayers to be combined are those which relate to each other and which do not depends on the outcome of the other application. I do agree that, those can be determined by the Court in one application to save time and costs for both, the parties and the court.

However, in the case at hand, the first prayer is *extension of time to allow the applicant to serve notice of appeal against the decision of the High Court out of time*. In my view, for a systematic approach and avoidance of

unnecessary confusion, the prayer for extension of time should be considered first, because those other prayers or applications depend on the outcome of it. Therefore, the other subsequent prayers or applications can be made only after the extension of time has been granted. It is also a fact that, if the prayer for extension of time fails, then the rest of the prayers grouped herein together will be rendered incompetent. In the case of **Mohamed I.A. Abdul Hussein V Pita Kempap Ltd** Civil Revision No. 66 of 2004 High Court of Tanzania (unreported), the Court held that:-

“In cases where the applicant fails to file an application for leave to appeal to the Court of Appeal within the statutory period of time, it is advisable that an application for extension of time to file an application for such leave should be preferred first. Once it is granted, then the application for leave should follow. If it is refused the matter will end there”. [Emphasis added].

In addition, Rule 46 (1) of the Tanzania Court of Appeal Rules, GN. No. 368 of 2009 provides that:-

*"Where an application for a certificate or for leave is necessary,
it shall be made after the notice of appeal is lodged".*

(Emphasis supplied).

Following the above authority which is persuasive to this Court and also the construction of the above Rule, it is apparent that, the applicant was required to first file a notice of appeal to this Court before anything else. Now, since the applicant is time barred to lodge the said notice, then he was required to first obtain an order for the extension of time to lodge the said notice. Admittedly, this is not the case in the present Application.

It is also a fact that, each of the above three prayers is governed by a particular and different provision of the law. It is also a fact that reasons or grounds upon which the Court considers before granting or denying the application for the extension of time and the one for leave to appeal to the Court of Appeal are completely different. For instance for an application for extension of time the Court looks for *good or sufficient reason for the delay* and the applicant has to *account for each day of the delay*, while for the

Leave to appeal to the Court of Appeal, the Court normally examine the *point of law* to be submitted to the Court of Appeal or on the issues of public importance that calls for the Court of Appeal intervention. As such, the supporting affidavit for the application should contain different facts to reflect what the Court should consider in a specific application. I am therefore persuaded by the findings of Hon. Mushi, J as he then was in **Abdul Masumai v Awaichi Awinia Massawe** Misc. Civil Application No. 99 of 1993, High Court of Tanzania (unreported) when he said,

“One application supported by one affidavit cannot support three distinct prayers and by lumping the three matters in one application as in the present one **makes the whole application incompetent** as it is not possible for the court to properly determine them” [Emphasis added].

In addition, see the decision of the Court of Appeal in **Rutagatina C.L v the Advocates Committee and Clavery Mtindo Ngalapa**, Civil Application No. 98 of 2010.

Anyhow, in order to consider the first prayer, I have since perused the Affidavit filed before the Court and I have failed to scan specific paragraphs

related with the same or even where the applicant has accounted for each day of the delay. Having so observed, this court maintains that, the present application is an omnibus application and has as well contravenes the mandatory provision of Rule 46(1) of the Court of Appeal Rules, 2009. Consequently, it is hereby struck out with costs.

It is so ordered.

DATED at DAR ES SALAAM this 04th Day of May, 2018.



R. K. Sameji

JUDGE

04/05/2018

COURT - Ruling Delivered in Court Chambers in the presence of the parties.

A right of Appeal explained.



R. K. Sameji

JUDGE

04/05/2018