

**IN THE HIGH COURT OF TAZANIA  
DAR ES SALAAM DISTRICT REGISTRY  
AT DAR ES SALAAM**

**MISC.CIVIL APPLICATION NO. 685 OF 2018**

*(Arising from Civil Appeal no. 115 of 2014 High Court DSM and  
Civil Appeal no. 1 of 2012 Morogoro District Court; Origin Civil  
Case no. 27 of 2011 Chamwino Primary Court)*

**ZAINA SALUM.....APPLICANT**

**VERSUS**

**MICHAEL MASANYA KIMARO.....RESPONDENT**

**RULING**

*Date of last order: 21/10/2019*

*Date of Ruling: 31/12/2019*

**S.M. KULITA J;**

This is an application for an extension of time for leave to file a certificate on the point of law to the Court of Appeal of Tanzania (CAT). The application has been made under section 11(1) of the Appellate Jurisdiction Act [Cap 141 R.E. 2002]. It is accompanied with a chamber summons supported by the affidavit deposed by **ZAINA SALUM**, applicant. The said applicant seeks the for extension of time to file certificate on the point of law to the Court of Appeal of Tanzania against the

judgment and decree of the High Court of Tanzania (Dar es Salaam) in the Civil Appeal no. 115 of 2014, delivered on 13/03/2015.

This application was heard by way of written submissions. The applicant submitted that the application was made by way of Chamber Summons supported by an affidavit affirmed by her.

In her affidavit the applicant prays to be granted the extension of time to file a certificate on the point of law for her to appeal to the Court of Appeal of Tanzania. The reasons behind have been stated in paragraphs no. 6 to 8 of the affidavit.

In her written submission the applicant submitted that prior to this application she had filed application for leave to appeal to the Court of appeal but it was dismissed for technical grounds. The applicant argued that she was misdirected by her counsel to file the application for extension of time to appeal to the court of appeal instead of certification of points of law. She said that that should not be used as bar to this application to be granted. The applicant concluded by praying for the court to grant the extension of time.

In reply thereto the respondent MICHAEL MASANYA KIMARO, submitted that the applicant has not explained as to how the

High Court has missed such points of law. That she never mentioned any of them which prompted her to seek for the said application. He submitted that the applicant has been negligent in prosecuting her case. Lastly, he prayed for this court to dismiss this application.

Upon receiving submissions from both parties I have this to say; in her submissions the applicant clearly stated that she had filed the application for extension of time to appeal to the Court of Appeal instead of the application for extension of time to lodge the application for certification on point of law for appealing at the CAT. She alleged that she was misled by the Counsel who was representing her.

I can agree with the applicant that fault of the Advocate should not make the client to suffer. However, upon reading the applicant's affidavit and her submissions no point of law has been mentioned to move this court to grant her an extension of time to file a certificate on a point of law, besides the application for extension and certification on a point of law are two things which use to go at once. In order to extend time for certification of point of law, the said points of law should be mentioned. The court goes through them and makes a collective decision, of which can be granting the application if the grounds are reasonable for the court to extend time and

the points of law are legally strong enough for this court to grant the application; or not to grant if the points of law are not sufficient and/or the reasons for delay are not justifiable. See **BENEDICT MUMELO V. BANK OF TANZANIA, Civil Appeal No. 12 of 2012, CAT at DSM (Unreported)**. See also **ISSA RAMADHAN V. HAMAD JUMANNE, Misc. Civil Application no. 567 of 2018, High Court DSM District Registry (Unreported)**

As the applicant has not mentioned the points of law that he is going to rely on at the CAT this application cannot be granted even if the applicant could have advanced justifiable reasons for delay. Section 11(1) of the Appellate Jurisdiction Act [Cap 141 RE 2002] states;

*".....the High Court .....**may extend the time** for.... making an application for leave to appeal or **for a certificate that the case is fit for appeal.....**"*

According to that provision both issues, that is prayer for extension of time and the litigation on the certification of point of law are supposed to be argued at once. It means the applicant was supposed to argue not only the reasons for delay but also the points of law for certification.

The aim of mentioning the points in the submissions is to enable the High Court knowing in advance whether the

applicant has genuine grounds (points of law) to present at the Court of Appeal.

In upshot I find this application lacks merit for the applicant's failure to mention the points of law for certification, hence dismissed. No order as to costs.



**S.M. KULITA**

**JUDGE**

**31/12/2019**