

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**MISCELLANEOUS LAND APPLICATION NO. 10 OF 2020**

(Arising from Judgment on admission at the District Land and Housing Tribunal for  
Mwanza at Mwanza, Land Application No. 37 of 2014)

**PETER MICHAEL FUTILA ..... APPLICANT**

**VERSUS**

**THE MANAGER PRIDE (T) LTD ..... 1<sup>ST</sup> RESPONDENT**

**CHRISTIAN C. ISEME ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**02 & 10/06/2020**

**RUMANYIKA, J.:**

The application is brought under Sections 47 (1) of Cap 216 and Section 5(1) (c) of the Appellate Jurisdiction Act Chapters 216 and 141 RE 2002 respectively and Rule 45(a) of the Court of Appeal of Tanzania Rules, 2009. It is with respect to decision/refusal of 28/01/2020 (Ismail, J) of extension of time within which Peter Michael Futila (the applicant) to appeal against judgment on admission and decree of 14/09/2018 (Original Land Application No. 37 of 2014 of the District Land and Housing Tribunal Mwanza (the DLHT). The application is supported by affidavit of Peter Michael Futila whose contents he adopted during the hearing.

Mr. Lameck Merumba learned state attorney appeared for The Manager Pride (T) Ltd (the 1<sup>st</sup> respondent). Like the applicant, Christian Iseme (the 2<sup>nd</sup> respondent) appeared in person.

Following the global outbreak of the Coronavirus Pandemic and pursuant to my order of 29/05/2020 when the appeal it was called on for hearing the parties were online (mobile numbers 0742205813, 0755624017 and 0765518107) respectively heard.

The applicant submitted that the 1<sup>st</sup> respondent was strange to the proceedings with whom he had never ever contracted with that he (the applicant) asked for leave to appeal to the Court of Appeal of Tanzania. That's it.

Mr. Lameck Merumba learned state attorney submitted that the application fell short of merits because contrary to the laid down principles, no one of the 3 issues raised (paragraph 16 of the supporting affidavit) had a point of general importance worth determination of the Highest fountain of justice. Leave alone overwhelming chances of success. We humbly submit that the application be dismissed with costs. The learned state attorney further contended.

The 2<sup>nd</sup> respondent in his submissions he took the same view with the learned state attorney and he urged the court to consider it as a devoid of merits application. That is it.

Looking at paragraph 16 of the supporting affidavit the only points upon which leave is sought would be reproduced as under:-

- (a) Whether it was proper to order hearing of the Application *ex parte* without service on the applicant herein.
- (b) Whether it was correct to record the Applicant as present on the 14/09/2018 while he was not present.
- (c) Whether the question of “full payment of the debt” did not constitute a good reason for extension of time to be tested by all parties’ *inter partes*.

The issue and it is trite law is whether any one of the three (3) points was of such nature and general importance arguable in the Court of Appeal of Tanzania. The answer is no. Whereas by all intents and purposes points (a) and (b) presuppose prematurity of the impugned “*ex parte*” judgment on admission in which case the applicant should have otherwise challenged it before a proper forum, quietly though the applicant may have meant it to be points of illegality (which itself constituted a sufficient ground) but the applicant did not state or in the supporting affidavit depose as such the general principle had it that once parties were jointly and together sued, admission of one binds codefendants much as the common civil liability was not denounced. Point (c) sounds more of dissatisfaction, therefore a ground of appeal not of leave one to lodge appeal.

Whereas I am afraid of running risks of rehearing the application for extension of time or even preempt an intended appeal, like Mr. Merumba learned state attorney rightly so argued, in considering whether or not to grant applications for leave courts cannot overlook the issue of the applicant having or having no overwhelming chances of successes much as whatever one may wish to call it, as said the applicant intended to appeal

against judgment and decree on admission. For some reasons only the applicant may have not been in attendance when, on the fateful date the DLHT had called out the matter fine! But that one notwithstanding much as therein and in that regard the common interested applicant and the present first respondents had been jointly and together sued and the applicant never ever disputed the fact.

In refusing him extension of time and having cited/quoted a series of authorities this court (Ismail, J) is on record inter alia having said and held:-

**"...the trite position is that a prayer for extension of time is an equitable discretion, exercised judiciously and on a proper analysis of the facts...Discretion for its grant is exercised upon satisfying the court, through presentation of a credible case ...the applicant should also act equitably (case of **Nicholas Kiptoo Arap Korir Slat V. IEBC and 7 Others**, Supra ct. Application 16 of 2014)...The rationale for imposing this stringent condition is to ensure that court orders do not benefit a party who is at fault...(case of **KIG Bar Grocery and Restaurant Ltd V. Gabaraki and Another (1972) E.A 503...no court will aid a man to drive from his own wrong...** In applications for extension of time, sufficient cause or lack of it is gathered from affidavits filed in support of ...(case of **The Registered Trustees of the Archdiocese of Dar es Salaam V. The Chairman Bunju Village and 11 Others**,**

Civil Appeal No. 147 of 2006...**If the appellant has a good case on the merits but is out of time and has no valid excuse for the delay the court must guard itself against the danger of being led away by sympathy, and the appeal should be dismissed as time-barred** even at the risk of injustice and hardship to the appellant” (case of **Dephane Parry V. Murry Alexander Carson** (1963) EA 546”).

Without running risks of jumping onto merits of the intended appeal at least it was never disputed that the applicant had borrowed money from the 1<sup>st</sup> respondent, whether or not he had been done and on that one no longer indebted, but in order one to recover the money his house was auctioned and sold, the applicant should not have attacked the consequences but the source in other words if anything, the applicant should have sued the respondents jointly and together for recovery of the house. It means therefore even where the application was to be granted, the applicant had no overwhelming chances of success. Whereas I am mindful of the fact that in considering to grant or refuse leave of appeal, this court do not assume or even pretend to be the Court of Appeal of Tanzania this court is only duty bound to filter which matters should and which ones by way of appeal was worth to be determined by the Highest fountain of justice. The application has failed the test, it is dismissed with costs accordingly ordered.

Right of appeal explained.

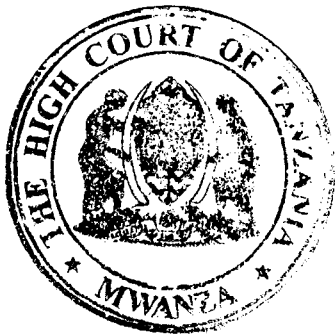


**S. M. RUMANYIKA**

**JUDGE**

**05/06/2020**

The ruling is delivered under my hand and seal of the court in chambers this 10/06/2020 in absence of the parties with notice.



**S. M. RUMANYIKA**

**JUDGE**

**10/06/2020**