IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF MWANZA)

AT MWANZA

MISC. CIVIL APPLICATION NO. 19 OF 2019

(Arising from the Judgment of the Court at Mwanza (Hon. Rumanyika, J) in PC. Civil Appeal No. 30 of 2017, dated 21st January, 2019.)

NYAWABURWA MAJURA KAEMA)
(Administrator of the estate of the)
late ***FURENGE KAEMA***) ..... **APPLICANT**

VERSUS

STEPHEN SAILE ..... **RESPONDENT**

RULING

8th, & 27th October, 2020

ISMAIL, J.

The instant application calls the Court to grant twin orders as follows:

1. Extension of time within which to file an application for certification that the intended appeal has a point of law for consideration by the Court of Appeal; and

2. Certification that the impending appeal to the Court of Appeal of Tanzania carries a point of law worth of consideration by the Court of Appeal of Tanzania.

The application is supported by the affidavit sworn by the applicant who identified himself as the administrator of the estate of the late Furenge Kaema, an erstwhile respondent in the District Court of Musoma and in this Court. The affidavit sets out grounds for the prayers sought. Of the grounds deponed in the affidavit, paragraphs 6 and 9 stand out as the most relevant, as they talk about the reason for the delay and what the applicant considers as points of law that he intends that they be considered for determination by the Court of Appeal. Generally speaking, the reason for the applicant's inability to institute the application within time was his financial inability that prevented him from engaging a lawyer who would draw up the application and argue it on his behalf.

I begin the disposal journey by first dealing with the first prayer, in which the issue to be resolved is whether the instant application is time barred. This question stems from the facts as deduced from the application and documents that it supports, including the judgment of the Court that the applicant seeks to impugne. These facts reveal that, whereas the said

judgment was delivered on 21st January, 2019, the instant application was filed in Court on 13th February, 2019. Counting from the date on which the decision was delivered, it is clear that the instant application was instituted on the 23rd day of the delivery of the judgment. This notwithstanding, the applicant's take is that this application is not timeous. This position is, most probably, based on the position enshrined in Rule 44 of the Rules, which provides that a certificate on a point of law has to be applied within fourteen days from the date the notice of appeal is lodged in court. If this is the basis, then that is an erroneous assumption and the reason is that such requirement is only reserved for applications whose intended appeals are criminal in nature. This is unlike appeals of a civil nature like the instant application.

It is common knowledge that the requirement for filing an application for a certificate on a point of law in civil appeals is provided for by the section 5 (2) (c) of the Appellate Jurisdiction Act (AJA), Cap. 141 R.E. 2019. The manner in which and the time within which the same has to be preferred is not stipulated in the AJA. It is not stipulated in the Court of Appeal Rules (the Rules), GN. 368 of 2009 (as amended) either. The practice has so far been to invoke the time frame set out in of Rule 45 (a)

of the Rules which, though it expressly provides for time frame for filing an application for leave to the Court of Appeal, it implicitly, and by parity of reasoning, covers applications for certificates on a point of law. This means that the time frame for filing an application for a certificate on a point of law is also 30 days from the date of delivery of the decision.

In this case, the extension of time is sought in respect of an application which was filed well within the time prescription of 30 days provided by the law, meaning that the application was not time barred as to require the applicant to seek the Court's indulgence in that respect. In view thereof, I find the applicant's endeavor a needless waste of efforts which is premised on a wrong interpretation of the law. I choose to ignore the prayer.

The second limb of the application requires me to certify that there is a point of law worth of consideration by the Court of Appeal.

In the affidavit that supports the application, a number of points have been proposed for consideration. In the applicant's view, the same constitute points of law of sufficient weight to warrant the attention of the

Court of Appeal. These are found in paragraph 9 of the supporting affidavit.

Hearing of the matter proceeded by way of written submissions, preferred by the applicant alone, following the Court's order that the application be heard *ex-parte*, owing to the respondent's persistent non-appearance in Court.

In the written submission filed in support of the application, Mr. Chiyengere Gaya Wandore, the learned advocate for the applicant, imputed illegalities in the District Court's decision, arguing that these illegalities ought to be rectified by way of the intended appeal to the Court of Appeal. One of such illegalities is the district court's decision to entertain revision proceedings which were filed 23 years after the decision had been made and without any extension of time. The applicant further contended that, in the judgment that he intends to impugn, the Court erroneously held or treated the district court's proceedings as though they had been condoned, while in fact they had not. He argued that Misc. Civil Application No. 30/2017 was in respect of the respondent's quest for extension of time to file an appeal to this Court and not on the extension of time to file revision in the district court. Lastly, the learned counsel contended that the

applicant was not afforded the right to a fair hearing when the revisional proceedings were called for hearing.

It is a trite position and the general principle that, appeals to the Court of Appeal that originate from the lower courts or tribunals must be preceded by the Court's certification that there is a point of law worth and relevant for consideration by the superior Court. This is the spirit that is consistent with the imperative requirement stipulated in section 5 (2) (c) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 (now R.E. 2019). It states as follows:

> *"Notwithstanding the provisions of subsection (1)-*
>
> *no appeal shall lie against any decision or order of the High Court in any proceedings under Head (c) of Part III of the Magistrates' Courts Act unless the High Court certifies that a point of law is involved in the decision or order."*

This provision of the law was emphasized in ***Abdallah Matata v. Raphael Mwaja***, CAT-Criminal Appeal No. 191 of 2013 (Dodoma-unreported), in which the Court of Appeal accentuated the following reasoning:

"In order to lodge a competent appeal to the Court, the intended appellant has to go through the High Court first with an application for a certificate that there is a point of law involved in the intended appeal. It is only when the appellant is armed with the certificate from the High Court, that a competent appeal may be instituted in this Court."

The decision in ***Abdallah Matata*** (supra) was inspired by another of the Court of Appeal of Tanzania's reasoning in ***Marco Kimiri & Another v. Naishoki Eliau Kimiri*** , CAT-Civil Appeal No. 39 of 2012 (ARS-unreported), wherein it was held:

"Section 5 (2) (c) of the Appellate Jurisdiction Act governs a certificate that a point of law is involved in an appeal under the Magistrates' Court Act, Cap. 11 R.E. 2002 originating from a primary court."

See also: ***Omari Yusufu v. Mwajuma Yusufu & Another*** [1983] TLR 29; ***Dickson Rubingwa v. Paulo Lazaro,*** CAT-Civil Application No. 1 Of 2008; and ***Harban Haji Mosi & Another v. Omari Hila Seif***, CAT-Civil Reference No. 19 of 1997 (both unreported).

What is clear from the application and the supporting documents is that there are legal questions which are yet to be resolved. These issues arise from the decision of the Court. These issues raise a couple of legal

questions which are, in my considered view, of sufficient importance to warrant consideration on appeal to the Court of Appeal, through the intended appeal. I, therefore, certify the following as points of law worth of consideration by the Court of Appeal:

1. *Whether the revisional proceedings which bred the impugned decision of the Court were time barred;*
2. *Whether an extension of time in Misc. Civil Application No. 30 of 2017 was in respect of or had the effect of extending time to institute Civil Revision No. 7 of 2015 which was pending in the District Court of Musoma at Musoma; and*
3. *Whether the right to be heard was accorded to the applicant in the disposal of Civil Revision No. 7 of 2015.*

In view of the foregoing, the application is granted as prayed. Costs shall be in the cause.

It is so ordered.

DATED at **MWANZA** this 27th day of October, 2020.

M.K. ISMAIL

JUDGE

Date: 27/10/2020

Coram: Hon. M. K. Ismail, J

Applicant: Mr. Mandale, Advocate

Respondent: Absent

B/C: B. France

Court:

Ruling delivered in chamber, in the presence of the applicant and his Counsel and in the absence of the Respondent, this 27th day of October, 2020.

M. K. Ismail

JUDGE

At Mwanza

27th October, 2020