

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

MISC. CIVIL APPLICATION NO. 20 OF 2020

(Arising from (DC) Civil Appeal No. 11/2020 in the High Court of Tanzania at Kigoma
Before: Hon. Mr. justice I. C. Mugeta J. dated 25th November, 2020, emanating from
the Judgment of the District Court of Kigoma Civil Case no. 09/2019 Before: Hon. K.V.
Mwakitalu - RM)

MUSSA MUSTAFA.....APPLICANT

VERSUS

HALID AHAMADI.....RESPONDENT

RULING

24 & 24/03/2021

A. MATUMA, J

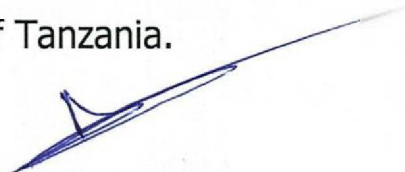
The Applicant Mussa Mustafa stood charged in the Primary Court of Ujiji at Kigoma for an offence of Criminal trespass vide criminal case no. 556 of 2014. He was convicted and sentenced accordingly. But for reasons not subject to the instant matter he delayed to appeal and thus unsuccessfully applied for extension of time to the District Court of Kigoma. He appealed to the High Court at Tabora (PC, Criminal Appeal no. 19 of 2016) against the decision of the District Court which denied him extension of time. In

the Course of hearing the appeal the High Court, Rumanyika, J. observed some illegalities in the trial court's record which necessitated him to invoke revisionary powers to nullify the proceedings thereat, quash the conviction against the applicant and set aside the consequential orders thereof.

It is after such decision of the High Court which nullified the proceedings led to the applicant's conviction, the applicant started Civil Claims against the respondent for a tort of malicious prosecution. He was however unsuccessful as the trial Magistrate found that he failed to establish that the respondent had prosecuted him maliciously because the appeal in the high court ended on technical basis and not on merit.

The applicant was aggrieved with the decision of the District Court hence an appeal to this Court in which Mr. Justice Mugeta dismissed it for want of any merit.

It is from such findings of this Court; the Applicant is aggrieved. He wants to knock the doors of the Court of Appeal of Tanzania, the notice of which has already been filed. He is now seeking before me leave under the provisions of rule 45 (a) of the Tanzania Court of Appeal Rules, 2009 to appeal to the Court of Appeal of Tanzania.



At the hearing of this Application, I wanted to satisfy myself as to whether the Court of Appeal Rules them alone, applies to the High Court in an application for leave to appeal to the Court of Appeal of Tanzania.

Mr. Ndayanse learned advocate and Mr. Sadiki Alikali learned advocate representing the Applicant and Respondent respectively addressed the court on the issue.

Mr. Ndayanse stood firm that the application is competent before me as the matter is no longer of this court but the Court of Appeal whose applicable law is the Court of Appeal Rules.

Mr. Sadiki on his party faulted the application submitting that so long as the applicant preferred the application by way of Chamber Summons supported with an affidavit, the applicable provisions would be section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2019 and that the Court of Appeal Rules as they stand, they are procedural rules for the Court of Appeal itself. He disputed that this matter is of the Court of appeal and argued that the same is still in the domain of this court and that is why we have the instant application.

I agree with Mr. Sadiki Alikali learned advocate that whenever a party is aggrieved by the decision of this court and intends to appeal to the court of appeal against the same under which leave of the High Court is

required, the applicable provisions for application for leave is section 5 (1) (c) of the Appellate Jurisdiction Act supra which provides;

"5 (1) In civil proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal;

*(c) **with the leave of the High Court** or of the Court of Appeal, against every other decree, order, judgment, decision or finding of the High Court".*

In fact, the Court of Appeal Rules as rightly observed by Mr. Sadiki Aliko learned advocate are procedural rules applicable to the Court of Appeal in both Criminal and Civil matters just like the Criminal Procedure Act and the Civil Procedure Code in the High Court and Courts subordinates thereto.

The applicant thus wrongly applied the provisions of the Court of Appeal rules by themselves without citing the provisions of the Appellate Jurisdiction Act supra. As it is provided for under section 5 (1) (c) of the Appellate Jurisdiction Act supra, leave to appeal to the court of Appeal may be sought either in the High Court or in the Court of Appeal. In the court of Appeal, it is sought as a second bite as



provided for under rules 45 (b) and 47 of the Court of Appeal Rules that;

"45. *In civil matters-*

(a) Not relevant

(b) where an appeal lies with the leave of the Court, application for leave shall be made in the manner prescribed in Rules 49 and 50 and within fourteen days of the decision against which it is desired to appeal or, *where the application for leave to appeal has been made to the High Court and refused, within fourteen days of that refusal.*

47. *Whenever application may be made either to the Court or to the High Court, **it shall in the first instance be made to the High Court** or tribunal as the case may be,*"

In the circumstances, I find myself as a court to have been wrongly moved under rule 45 (a) of the Court of Appeal Rules supra to exercise my discretion whether or not to grant leave as such rule is there to serve the purpose of a second bite application before the Court of Appeal itself. It has nothing to do with the High Court as it does not confer jurisdiction

thereto although at times litigants have been citing it along with those of the appellate Jurisdiction Act. In the instant matter it has been cited alone.

This application is thus incompetent before me and I consequently struck the same out with no orders as to costs since the determination hereof has been instigated by the court suo motto. Whoever aggrieved with this ruling has the right of appeal to the Court of Appeal of Tanzania. It is so ordered.



A. Matuma

Judge

24/03/2021

Court: Ruling delivered in presence applicant and his advocate Mr. Masendeka Ndayanse and respondent with his advocate Mr. Sadick Alik.

Sgd: A. Matuma

Judge

24/03/2021