

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

MISC. CIVIL APPLICATION NO 325 OF 2020

(Arising From Reference No. 15 of 2020)

**ABDUL SHAKOOR HALDAYAPPLICANT
VERSUS
VIJAY SHANTILAH CHOCHAN..... RESPONDENT**

RULING

Last Order:20/4/2021
Ruling: 18/5/2021

MASABO, J

Abdul Shakoor Halday, the applicant herein has moved this court to grant him leave to appeal to the Court of Appeal pursuant to the provision of section 5(1) (c) of the Appellate Jurisdiction Act [Cap 141 RE 2019]. Supporting the application is an affidavit deposed by one Reginald Bernard Shirima who is identified as the applicant's counsel. The following facts emerge from the affidavit.

The applicant filed Taxation Cause No. 02 of 2019 before Hon. Tiganga DR (as he then was) where, on 31st July 2019 he was awarded a sum of 7,540,000/= out of Tshs 44,240,000 prayed in the bill of cost. Believing that he was wrongly adjudged and desirous of challenging the award, on 2nd August, 2019 he requested a copy of ruling which was supplied to him on 20th August 2019. He thereafter proceeded to file Reference No. 15 of 2019 in this court. His reference was dismissed after the court sustained a preliminary objection raised by the

respondent that the reference was time barred. Affronted, the applicant has come back to this court seeking leave to appeal to the Court of Appeal against the decision which he claims was wrongly arrived at in total disregard of the time he spent to obtain a copy of the ruling contrary to the requirement of section 19(2) of the Law of Limitation Act [Cap 89 which permits the exclusion of time spent in obtaining copies of judgment, ruling, decree or order.

The application proceeded in writing. Both parties had representation. Mr. Abdul Fatah, learned counsel appeared for the Appellant and Mr. Theodore Primus, learned counsel represented the respondent.

Mr. Fatah submitted that there are two arguable points worth the consideration of the Court of Appeal. The first point in his view, is whether the provision of section 19(2) of the Law of limitation Act, which allows an automatic exclusion, from computation of time, of all the time spent in obtaining a copy of the decree, judgment, ruling or order appealed from is applicable in references. Reliance was placed on the decision of the Court of Appeal in **The Registered Trustees of Marian Healing Centre @ Wanamaombi vs The Registered Trustees of Catholic Church, Sumbawanga Diocese** Civil Appeal No 64 of 2007 (unreported) which was decided in favor of an automatic exclusion of the time spent in obtaining the said copies. Further reliance was placed on rule 45 of the Court of Appeal Rules, 2017.

The second point is premised on the actual remedy which the court ought to award having found the application incompetent for being filed out of time. His main argument was that, since the refence was found incompetent owing to time

limitation, it was not proper for the court to dismiss as that presumes that it was heard and determined on merit. Thus, the dismissal order metered by court merits consideration of the Court of Appeal to determine whether Refence No 15 of 2020 was prematurely dismissed.

Having set out the two points, he drew reference to a plethora of authorities from the Court of Appeal and persuasive authorities from this court in support of his arguments. In specific, the authorities cited include: **Hamisi Madinda and Another vs Registered Trustees of Islamic Foundation**, Civil Appeal No 232 of 2018 Court of Appeal, CAT (unreported); **Ameir Mbarak & Another vs Edgar Kihwili**, Misc. Land Application No. 18 of 2013 (HC), **Maulid Hussein vs Abdallah Juma** Civil application No. 20 of 1988, CAT (unreported); **Swissport Tanzania Limited and Precision Air Services Limited vs Michael Lugaila** Civil Appeal No 199/2010 (HC- Dar es Salaam) unreported; and **Abubakar Ali Hi mid vs Edward Nyelusye** Civil application No 51 of 2007, CAT at Dar es Salaam (unreported). Two points are discernible from these authorities; thus, **first**, this court is mandated to grant leave to enable a litigant to appeal to the Court of Appeal; **second**, the exercise of such powers is discretionary and, as a matter of law and practice, it must be judiciously exercised upon the applicant demonstrating that, there is a point of significant importance requiring the determination of the Court of Appeal. Based on these points, he invited me to find and hold that the two points above, are of sufficient importance and merit the determination of the Court of Appeal.

The counsel for the respondent, did not have reservations over the principle in the above cases. With reference to **Hamis Madida & Said Mbogo v the**

Registered Trustees of Islamic Foundations (supra) in further fortification of the above principles and proceeded to argue that, as per this authority leave can issue where the intended appeal has reasonable chances of success or where proceedings appealed against reveal disturbing features requiring the guidance of the Court of Appeal.

He then proceeded to argue that, the present application is devoid of merit as it does not suit the principle above. The provision of section 19(2) of the Law of Limitation Act, was, in his view, cited out of context and so is the decision of the Court of Appeal in **Registered Trustees of the Marian Healing Centre** (supra). His contention in support of this position was that, reference are filed under **Advocates Remuneration Order** which unlike appeals, does not prescribe a mandatory requirement for appending a ruling or order to the application. The time limitation within which to file the reference is 21 days (Order 7(2)) and, in the event one is delayed by a good cause, the time can be enlarged under Order 8(1). As there is a specific law regulating references, he argued that, it would be a lucid misconception to place such references under section 19(2) of the Law of Limitations Act and the authority in **Registered Trustees of the Marian Healing Centre** (supra).

In regard to the second point, it was argued that the position of law in this issue is very well settled that, an action brought to court after the expiry of time is due for dismissal as per section 3 of the Law of Limitation Act, Cap 89 RE 2019. The case of **Hezron M. Nyachiya** Civil Appeal No. 79 of 2001 was cited in support of the submission.

Rejoining, Mr. Fatah submitted that although Order 7 (2) of the Advocates Remuneration Order is silent on the requirement to append the order/ruling it does not mean that they are irrelevant, therefore, section 19(2) of the Law of Limitation Act (supra) is intrinsically applicable and so is the authority in **Registered Trustees of the Marian Healing Centre** (supra).

I have thoroughly read and considered submissions from both parties. As submitted by both parties the law regulating application for leave to appeal to the Court of Appeal is fairly settled both with regard to the jurisdiction of this court and the applicable principles. With regard to the jurisdiction, section 5(1) (c) of the **Appellate Jurisdiction Act** [Cap 141 RE 2019] clothes this court with the discretion to grant leave to litigants intending to appeal to the Court of appeal in matters where, appeal to the Court of Appeal is contingent to a leave. The mandate, as argued by both parties, is discretionary and is exercised upon the applicant demonstrating to the satisfaction of conditions articulated in the cases cited by the both parties to which I fully subscribe and abide. A further articulation of these principles is found in the decision of the Court of Appeal in **Rutagatina C. L & Another v The Advocates Committee & Another** (supra), thus:

An application for leave is usually granted if there is good reason, normally on a point of law or on a point of public importance, that calls for this Court's intervention. Indeed, on the aspect of leave to appeal the underlying principle was well stated by this Court in **Harban Haji Mosi and Another v Omar Hilal Seif and Another**, Civil Reference No. 19 of 1997 (unreported) thus:-

Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceedings as a whole reveal such disturbing features as to require the guidance of

the Court of Appeal. The purpose of the provision is therefore to spare the Court the spectre of unmeriting matters and to enable it to give adequate attention to cases of true public importance.

The same principle was restated in the subsequent decision of this Court in **British Broadcasting Corporation v Eric Sikujua Ng'maryo**, Civil Application No. 133 of 2004 (unreported) as follows:-

*Needless to say, leave to appeal is not automatic. It is within the discretion of the Court to grant or refuse leave. The discretion must, however be judiciously exercised on the materials before the court. As a matter of general principle, leave to appeal will be granted where the grounds of appeal raise issues of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal (see: **Buckle v Holmes** (1926) ALL ER. Rep. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted.*

Therefore, in the present application, my exclusive task is to determine whether the two points raised by the applicant fall under the realm of this authority. Having examined both issues, I am unable to place the second issue in the above spectrum as the position in this issue is well settled in jurisprudence and the applicant has adduced no materials to justify the intervention of the Court of Appeal in this issue whose position is very settled that pursuant to section 3(1) of the Law of Limitations Act (supra), when the suit is time barred the only remedy is to dismiss it.

Regarding the first point, I am of the firm view that the applicant has demonstrated an arguable case warranting the consideration of the court of Appeal, to wit, whether the provision of section 19(2) of the Law of Limitations Act which allows automatic exclusion of the days within which a litigant was waiting to be furnished with the copy of ruling, judgment or order, is applicable

in references filed under the Advocates Remuneration Order.

In the upshot, I allow the application. Costs to be shared.

DATED at DAR ES SALAAM this 18th day May 2021.



A handwritten signature in blue ink, consisting of stylized, overlapping loops and lines.

J.L. MASABO
JUDGE