

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**TANGA DISTRICT REGISTRY**

**AT TANGA**

**MISC. CIVIL APPLICATION NO. 46 OF 2019**

**(Arising from Misc. Civil Application No. 57 of 2019 and Civil Case No. 5 of 2012 of the High Court -Tanga)**

**SALIM AMRI SAID..... APPLICANT**

**VERSUS**

**GRACE SEMVUA MSANGI (The Administratrix of the estate of NAPENDAEL MSANGI, Deceased)..... RESPONDENT**

**RULING**

**MRUMA, J.**

The Applicant Salim Amri Saidi has brought this application seeking for leave of this court to allow him to appeal to the Court of Appeal to challenge the decision of this court (Mkasimongwa J.) in Miscellaneous Civil Application no. 57 of 2017 delivered on 21/10/2019.

In that application, the present Applicant unsuccessfully filed an application for extension of time within which he could file another application to set aside an ex-parte judgment passed against him in Civil Case No. 5 of 2012 (Msuya J.) as she then was.

In its ruling dated 21/10/2019, this court found that the Applicant did not establish sufficient cause to warrant it to grant the extension sought. The Applicant was aggrieved with the above decision and he wants to challenge it in the Court of Appeal on the following grounds:

*1. Whether it was proper for the High Court Judge to dismiss the application without disclosing reasons.*

*2. Whether it was proper for the High court judge to depart from the decision of his fellow judge without disclosing sufficient reason on the said departure.*

*3. Whether the High Court judge was proper to hold that the reason for failure (sic) to lodge application for setting the ex-parte judgment in time ought to be in the application to set aside ex-parte judgment.*

*4. Whether it was proper for the High Court judge to dismiss the application while knowing that the present respondent had already initiated execution process against a stranger to the main case hence left an illegality uncured.*

This application is pegged under section 5(1) (c) of the Appellate Jurisdiction Act [Cap 14 R.E. 2019] which provides that:-

*'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 leave of the High Court or of this Court of Appeal against every other decree, order, judgment decision or finding of the High Court'*

From the wording of the provision of section 5 (1) (i) of the Appellate Jurisdiction Act the first question I asked myself is whether leave is required before one can appeal against the decision of the High Court exercising its original jurisdiction. My answer to that self-posed question is No!. The right to appeal and particularly the first appeal being a constitutional right under Article 13 (6) (a) of the Constitution of the United Republic, cannot be subjected to discussion of the court or any other institution. In my view, because the Applicant is challenging the decision of this court exercising its original jurisdiction ought to have appealed to the Court of Appeal as a matter of right and in terms of section 5 (1) (a) of


the Appellate Jurisdiction Act. It is thus, my finding that seeking leave in this application was a misconception.

But assuming that it was right for the Applicant to seek leave of this court before going to the Court of Appeal, the question that court has to answer is whether the grounds under which the application is brought would warrant attention of the Court of Appeal.

The Court Appeal of Tanzania is the highest court of the land. In other words, it is our supreme court for all cases and controversies arising under all laws and the Constitution of the United Republic. As the final arbiter of the law, the Court of Appeal is charged with ensuring equal justice under the law as enshrined under Article 13 (1) of the Constitution. Thus, it is my view that appeal being a review of whether or not a decision made by the High court (or any court subordinate to the Court of Appeal) was fair and consistent with this law need to be based on crucial points which relate to substantive justice lest there will be no difference between courts of original jurisdiction and the appellate courts and in this case, the Court of Appeal.

It is settled law that granting or not granting extension of time is within the discretion of the court upon material facts being presented before it. A person aggrieved by the court in exercising its discretion can only challenge it by showing that the discretion was not exercised judicially. In the case at hand, the main argument of the Applicant is that the Respondent has or is executing its decree against a stranger which was not a party to the main suit. The law provides for a procedure to be followed by a party whose property has been attached in execution of a decree in which he/she was not a party to the original suit. Rules 57 (1) & (2), 58, 59, 60, 61 and 62 of order XXI of the Civil Procedure Code provide for remedies in a situation where property of a stranger is attached.

For the foregoing reasons, the Applicant's application is misconceived both in form and in substance. Accordingly, it is dismissed with costs.

  
Sdg: A.R. Mruma,

Judge

23/03/2021

Date: 23/03/2021

Coram: A.R. Mruma, J.

Applicant: Mr. Shukuru Khalifa for E. Mujungu Adv for Applicant.

Respondent: Mr. Shukuru Khalifa

C/C: Deborah.

**Court:**

Ruling delivered.



  
A.R. Mruma, J

23/03/2021