

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN DISTRICT REGISTRY OF MUSOMA**

AT MUSOMA

MISC. CIVIL APPLICATION NO. 9 OF 2021

MAGIGE GIBOMA APPLICANT

VERSUS

MANG'ANG'A MAHONO RESPONDENT

***(Arising from the decision of this Court in Miscellaneous
Civil Application No. 31 of 2019)***

RULING

22th and 22th July, 2021

KISANYA, J.:

This omnibus application has been preferred under section 11 (1) of the Appellate Jurisdiction Act, Cap. 141, R.E. 2019 (the AJA) and rule 45(a) of the Court of Appeal Rules, 2009 (as amended). The applicant, Magige Giboma has moved the Court seeking for following orders:

1. That this Court be pleased to extend time within which to apply for leave to appeal to the Court of Appeal of Tanzania.
2. That, after granting the extension, the Court be pleased to grant the applicant, leave to appeal to the Court of Appeal.

The application is made by way of chamber summons and supported by the applicant's affidavit sworn on 18th November, 2020.

Pursuant to the chamber summons and supporting affidavit, the ruling subject to this application was delivered by this Court (Kahyoza, J) in Misc. Civil Application No. 31 of 2019 on 22nd April, 2020. In that ruling, the Court dismissed the applicant's application for extension of time within which to lodge appeal against the decision of the District Court of Serengeti at Mugumu.

Aggrieved by the decision of this Court, the applicant filed an application seeking this Court to certify a point of law involved in his appeal to the Court of Appeal. The said application (Misc. Civil Application No. 26 of 2020) was struck out on 4th November, 2020, for being incompetent. Still determined to appeal to the Court of Appeal, the applicant lodged the present application for the orders stated hereinabove. The respondent did not file a counter-affidavit to contest the application.

When the matter came up for hearing today, the applicant was represented by Mr. Emmanuel Gervas, learned advocate. On the other hand, the respondent appeared in person.

Submitting in support of the application, Gervas adopted the supporting affidavit and supplementary affidavit. It was the learned

counsel's submission that the delay to file application for leave to appeal was caused by the reasons beyond the applicant's control. He submitted that, immediately after the decision subject to this matter, the applicant lodged in good faith, an application for a certificate on point of law instead of leave to appeal. Mr. Gervas went on to submit that the present application was filed through electronic filing system on 18/11/2020 but the Court recorded that it was lodged on 12/02/2021.

That said, the learned counsel asked me to extend the time within which to apply for leave to appeal. He was of the view that the applicant had accounted for each day of delay.

When invited to submit against the application, the respondent had nothing to respond.

This being an omnibus application, I will first consider whether the prayer for extension of time is meritorious before addressing the second prayer for leave to appeal to the Court of Appeal. In the event the prayer for extension of time is found not meritorious, the prayer for leave to appeal to the Court of Appeal will die a natural death.

Noteworthy, in terms of rule 45(a) of the Court of Appeal Rule, 2009 as amended, the time within which to apply for leave to appeal to the Court of Appeal is thirty days from the date of impugned decision. In terms of section 11(1) of the AJA, this Court has mandate to extend the time within which to apply for leave to appeal to the Court of Appeal. The applicant is duty bound to demonstrate a sufficient cause for extension of time in order for the Court to exercise its discretionary power. The case law has established factors to be considered in determining whether there is a sufficient ground. For instance, in **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported), the Court of Appeal underscored that the said factors to include, the length of the delay, whether or not the delay has been explained away, diligence on the part of the applicant and whether there is an illegality in the impugned decision. The law is also settled that the applicant should account for each day of delay.

As indicate earlier, the impugned ruling was delivered on 22nd April, 2020. Therefore, in terms of rule 45 (a) of the Court of Appeal Rules (supra), the time within which to apply for leave to appeal lapsed

on 21st May, 2020. However, the present application was recorded to have lodged on 12th February, 2021.

In that regard, the issue that I am called upon to determine is whether the applicant has given a sufficient reason for the delay and accounted for each day of delay. Looking at the supporting affidavit, there are three events related to this matter.

I prefer to start with the third event, which covers the period from 18th November, 2020 when the applicant lodged the application through electronic filing system to 12th February, 2021 when the application was recorded to have lodged to this Court. The fact that the applicant lodged the application on 18th November, 2020 was not contested by the respondent. Also that fact is also supported by the exchequer receipt which is in the case file. It indicates that the court fees for filing the application was paid 20th November, 2020. Therefore, pursuant to rule 21 of the Judicature and Application of Laws (Electronic Filing) Rules, G.N. 148 of 2018, the present application is considered to have been filed on 18th November, 2020 and not 12th February 2021. Eventually, I am satisfied that the period between 18th November 2020 and 12th February has been accounted for.

I will now consider the second event. This covers 14 days from 4th November, 2020 when the application for certificate on point of law was struck out to 18th November, 2021 when the application at hand was filed in the Court. Paragraph 4 of the supplementary affidavit shows that the said period was used to prepare and register the present application. In my view, since the applicant knew or ought to have known from 4th November, 2020 that he was out of time. Therefore, he ought to have acted diligently. It is implausible that the chamber summons and affidavit in this case were prepared for 14 days.

I now revert to the first event which cover the period from 24th April, 2020 when the impugned ruling was delivered to 4th November, 2020 when the incompetent application was struck out. The applicant deposed that this period was used to prosecute the application which this Court found to be incompetent. It is trite law that ignorance by an advocate of what procedure needed to be followed or lack of due diligence on the part of the counsel is not sufficient ground for extension. See **Mussa S. Msangi and Another vs Anna Peter Mkomea**, Civil Application No. 188/17 of 2019 and **Omar Ibrahim vs**

Ndege Commercial Services Ltd.

In the instant case, the applicant deposed in paragraphs 12 and 13 that he was not negligent in prosecuting the application which was struck out for being incompetent. I have gone through the said ruling. As stated earlier, instead of applying for a leave to appeal, the applicant applied for the Court to certify a point of law in the intended appeal to the Court of Appeal. It is my considered view that, the circumstances of this case shows that the applicant's counsel was not aware of the proper recourse to take against the decision subject to this application. This is also reflected in the ruling of my learned brother Kahyoza, J, when he said:

"I am dumb found that the said advocate cannot appreciated the clear wording of section 11 of AJA. The section is so clear so much that it needs no legal minds to construe. It regulates application for extension of time and not otherwise."

In view of the above, I find that the applicant's counsel was ignorant of the procedure to follow. That is why he applied for the Court to certify the point of law involved in the intended appeal to the Court of appeal while the proper recourse was to apply leave to appeal. Such

ignorance cannot constitute a good cause for extension of time. In the result, I find the period from 22nd April, 2020 to 14th November, 2020 not been accounted for.

For the foresaid reasons, I am of the view that the prayer for extension of time to apply for leave to appeal is not meritorious. In consequence, I will not consider the second prayer on the leave to appeal to the Court of Appeal. At the end, the application is hereby dismissed for want of merit. In terms of rule 45A of the Court of Appeal Rules (supra) an aggrieved party may within fourteen days of this ruling decision apply to the Court of Appeal for extension of time. I make no order as to costs because the respondent defaulted to file his counter affidavit and has not prayed for the same.

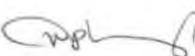
DATED at MUSOMA this 22nd day of July, 2021.




E. S. Kisanya
JUDGE

Court: Ruling delivered this 22nd day of July, 2021 in the presence of both parties. B/C Catherine Tenga present.




E. S. Kisanya
JUDGE
22/07/2021