

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

(APPELLATE JURISDICTION)

MISC. CIVIL APPLICATION NO. 13 OF 2021

(Arising from Misc. Land Appeal No.24 of 2020 Before I.C. Mugeta, J. in Land Appeal No. 31 of 2019 of the District Land and Housing Tribunal for Kigoma Before F. Chinuku Chairperson, Original from Land Case No. 11 of 2018 of Buhoro Ward Tribunal)

JONAS S/O KAPELA..... APPLICANT

VERSUS

RULASHITSE S/O SAMAJE.....RESPONDENT

R U L I N G

09th & 09th August, 2021

A. MATUMA, J.

The Applicant is seeking extension of time within which to lodge notice of intention to appeal to the Court of Appeal of Tanzania against the judgment of this Court by honourable Justice I.C. Mugeta which was delivered on 27/04/2021. The applicant is as well seeking extension of time within which to lodge an application for leave to appeal to the Court of Appeal. At the hearing of this application the applicant was present in person and adopted his sworn affidavit in support of this application.



The respondent was as well present in person and had not filed the Counter affidavit of the ground that he was served with the Chamber Summons alone without any supporting affidavit.

I decided to hear this application on its merit despite of some shortcomings as shall be demonstrated later.

The applicant submitted reiterating the contents of his affidavit which was filed in support of the Chamber Summons. The respondent on his party opposed this application stating that if at all the applicant was serious enough, he could have made close follow ups to his advocate to have the intended appeal processed.

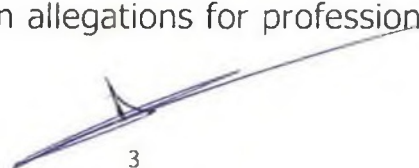
Having gone through the Applicant's affidavit, the ground upon which the applicant prays for extension of time is that immediate after the delivery of the impugned judgment he instructed Mr. Rumenyela learned advocate to lodge the Notice of Appeal to the Court of Appeal and the relevant application for leave to appeal. That on his follow up to the advocate's chamber on 8/5/2021, the documents were yet prepared. On his further follow up on 15/08/2021, the learned advocate (Mr. Rumenyela) informed him that he has already prepared the documents and filed in court. He further averred that the learned advocate required him to be calm and wait for the Court summons telling him;

'Mahakama siyo ya kufuatilia hovy hovy. Yenyewe itatoa majibu'

That he waited in vain and thus decided to ask a copy of the filed documents but the learned advocate informed him that he did not remain with any copy. In such situation, he decided to make physical follow up to the Court Registry only to find that no any documents were filed hence this application.

It is my firm stand that what has been deposed in the affidavit are allegations for professional misconducts against advocate Rumenyela and not grounds for the delay. The alleged professional misconducts would only be relevant for the delay and extension of time if proved through the appropriate forum. They cannot however be proved in this application as it is not the proper forum for the purpose.

The applicant if truly engaged advocate Rumenyela and instructed him to lodge the requisite notice of appeal and application but the said advocate did not professionally act, he must take him to the advocate's committee for redress. Once the committee finds the advocate guilty, it is when he can use the verdict thereof as a supporting ground for his delay to lodge the notice and apply for leave. Otherwise the affidavit of the applicant contains nothing rather than allegations for professional misconducts on



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the part of the advocate. Allowing such allegations as a ground for extension of time would open a pandora box for whoever has no sufficient cause for the delay since it would suffice for him to create and fabricate bare allegations against the advocate who is not a party to the application. Not only that but also it would amount to affirming the allegations as being true in which case it would be condemning the alleged advocate unheard. I am not prepared to do so as I did in the case of ***Evance Bugale versus Jimi s/o Modest***, Misc. Land application No. 03 of 2021, High Court of Kigoma whereas I refused to act on allegations of this nature to extend the time in which I ruled that allegation for professional misconducts against the applicant's previous advocate cannot be affirmed as being true without hearing such alleged advocate nor can be concluded to constitute good cause for delay without proof thereof. It is on this observation this application is held to have been brought without any sufficient cause.

But even if, the alleged allegations in the applicant's affidavit would be relevant, still the affidavit is defective for the deponent is Jonas Kapela (the applicant) but the one who verified it thereof is one **Gaudensia Gervas**. When I asked the Applicant, who was Gaudensia Gervas he did not know her. In the circumstances he who **sworn** the affidavit is not he

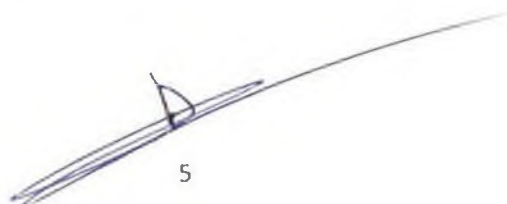


who **verified** it. It might be the effect of copy and paste but Joyce d/o Godfrey learned advocate who attested the jurat ought to have discovered the anomaly to the effect that the verification clause did not contain a true deponent. Otherwise, she did not act diligently by reading the contents of the affidavit before attesting it, if she was not the one who prepared it under camouflage as purportedly drawn and filed by the applicant in person. Had she read the contents of the affidavit, she would have even detected that paragraph five thereof avers that the applicant went to the advocate's chamber on 15/08/2021, the date of which is yet to be reached as today is 09/08/2021.

Not only that but also, the application is omnibus for extension of time to file both notice to the Court of Appeal and Leave to appeal. The impugned judgment originates from the Ward Tribunal of Buhoro. If the appeal goes to the Court of Appeal, it would be the third Appeal whereas the legal requirement is Certificate on point of law and not leave to appeal. Application for leave is thus misconceived even if everything would have been in order.

To that end, this application is hereby dismissed in its entirety with costs. Right of appeal is explained.

It is so ordered.

A handwritten signature in blue ink, consisting of a stylized 'D' followed by a long, sweeping horizontal line that curves upwards at the end.




A. Matuma

Judge

09/08/2021

Court: Ruling delivered in the presence of the parties in person. Right of appeal explained.

Sgd: A. Matuma

Judge

09/08/2021