

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

**AT MUSOMA**

**MISC. CIVIL APPLICATION NO. 35 OF 2021**

**BEATRICE SARIRO ..... 1<sup>ST</sup> APPLICANT**  
**IDAYA MASEKE ..... 2<sup>ND</sup> APPLICANT**  
**ZONOBIA B. MASAGIDA ..... 3<sup>RD</sup> APPLICANT**

***VERSUS***

**RAPHAEL SARIRO ..... RESPONDENT**

***(Application arising from the judgment of this Court (Kahyoza, J.)  
dated 29<sup>th</sup> January, 2021 in PC Civil Appeal No. 32 of 2020)***

**RULING**

16<sup>th</sup> and 16<sup>th</sup> August, 2021

**KISANYA, J.:**

By way of Chamber Summons made under section 11(1) of the Appellate Jurisdiction Act [Cap. 141, R.E. 2019) and section 21 of the Law of Limitation Act [Cap. 89, R.E. 2019), the applicants have moved the Court seeking for the following orders:

- 1. That, this Honourable Court be pleased to extend time to the 2<sup>nd</sup> applicant to apply for leave to appeal to the Court.*
- 2. That, this Honourable Court be pleased to grant leave to the 2<sup>nd</sup> applicant to appeal to the Court of Appeal against the whole*

*decision of the High Court (Hon. Kahyoza, J) dated 29<sup>th</sup> January, 2021 in PC Civil Appeal No. 32 of 2020.*

The application is supported by an affidavit sworn by the 2<sup>nd</sup> applicant, Idaya Maseke on 6<sup>th</sup> July, 2021.

What comes out from the Chamber Summons, affidavits and the copy of judgment appended thereto is the following story: The respondent, unsuccessfully filed an objection proceedings in the Primary Court protesting the attachment of the household items in satisfaction of the decree that had been entered in favour of the 2<sup>nd</sup> applicant against the 1<sup>st</sup> appellant. His appeal to the District Court of Musoma was dismissed for want of merit. The respondent's appeal to this was allowed on the reason that the items were not subject of attachment. The Court went on to raise the attachment order. It also ordered the properties to be restored to the appellant. The 2<sup>nd</sup> applicant is aggrieved by that decision and thus, the present omnibus application for the foresaid orders.

When the matter was called on for hearing today, the 2<sup>nd</sup> applicant was represented by Mr. Evance Njau, learned advocate, while the respondent appeared in person. The 1<sup>st</sup> and 3<sup>rd</sup> applicants failed to appear. Also, they did not file their respective affidavits to support the application.

Since the pleadings speak louder that the proceedings originated from the Primary Court, I implored the parties to address the Court on the competence of application in view of the orders sought in the Chambers Summons. This issue was premised on the provision of section 5(2) (c) of the AJA which provides:

*"5(2) (c) no appeal shall lie against any decision or order of the High Court in any proceedings under Head (c) of Part III of the Magistrates' Courts Act unless the High Court certifies that a point of law is involved in the decision or order".*

Mr. Njau readily conceded to that the application was incompetent before the Court. Apart from the issue raised by the Court, he submitted that the 2<sup>nd</sup> applicant had not lodged the notice of appeal to the Court of Appeal. Therefore, he prayed to withdraw the application with leave to refile a fresh application.

The respondent was of the view that the 2<sup>nd</sup> applicant ought to have complied with the law. He prayed that the application be struck out on the ground that the applicant was delaying to comply with the order issued by this Court.

For the foregoing submission, I find it relevant to first direct our minds on the procedures governing appeals from this Court to the Court of Appeal. The law is settled that, if the proceedings originate from the primary court, an aggrieved party has first to apply and obtain a certificate that there is a point of law involved in the decision of the High Court. Without a certificate on a point of

law in the proceedings originating from the primary court, the appeal before the Court of Appeal is incompetent. There is a list of authorities on that stance. See for instance, the case of **Abdallah Matata vs. Raphael Mwaja**, Criminal Appeal No. 191 of 2013, CAT at Dodoma (unreported) in which the Court of Appeal had this to say on the issue under discussion:-

*"In order to lodge a competent appeal to the Court the intended appellant has to go through the High Court first with an application for a certificate that there is a point of law involved in the intended appeal. It is only when the appellant is armed with the certificate from the High Court, that a competent appeal may be instituted in this Court."*

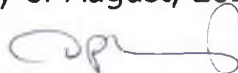
That being the position of law, I find the present application for extension of time to lodge application for leave to appeal and leave to appeal to the Court of Appeal misconceived and incompetent before this Court. The applicant ought to have applied for a certificate on point of law involved in the intended appeal and not leave to appeal to the Court of Appeal.

There is yet another defect in the instant application. As rightly submitted by Mr. Njau, the applicant was required to lodge the notice of appeal before lodging the application for leave to appeal or certificate on point of law. In terms of rule 83(1) and (2) of the Court of Appeal Rules, 2009 (as amended), the notice of appeal to the Court of Appeal is filed within thirty (30) days from the

date of impugned decision. It is trite law that, without a proper notice of appeal, the application for leave to appeal to appeal, certificate on point of law or appeal cannot stand. See the case of **Emmanuel Funga vs Halmshauri ya Kijiji cha Mvumi Mission**, Civil Appeal No. 350 of 2019, CAT at Dodoma.

In the event, I am inclined, as hereby do strike out this application for being incompetent. I make no order as to costs due the circumstances of this case.

Dated at MUSOMA this 16<sup>th</sup> day of August, 2021.



E. S. Kisanya  
JUDGE

Court: Ruling delivered this 16<sup>th</sup> day of August, 2021 in the presence of Mr. Evance Njau for the second applicant, the respondent and in the absence of the first and third respondents.



E. S. Kisanya  
JUDGE  
16/08/2021











