

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

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**MISCELLANEOUS CIVIL APPLICATION No. 45 OF 2021**

**(Arising from PC Civil Appeal No. 04 of 2021 High Court of Tanzania,  
originating from Civil Appeal No. 09 of 2020 at Ilemela District Court, from  
original Civil Case No. 149 of 2019)**

**PUNUNTAS CO. LIMITED (NEWTON KITUNDU).....APPLICANT**

**VERSUS**

**MAGIGI SAGARYA.....RESPONDENT**

**RULING**

13<sup>th</sup> & 27<sup>th</sup> September, 2021.

**TIGANGA, J.**

The applicant herein having been aggrieved by the decision of this court in PC Civil Appeal No. 04 of 2021 (Rumanyika, J) dated 13<sup>th</sup> April, 2021, lodged this application by way of chamber summons supported by the affidavit of one Newton Kitundu urging this court to grant certificate on points of law to appeal to the Court of Appeal of Tanzania. The application has been preferred under the provisions of section 5(2) (c) of the Appellate Jurisdiction Act [Cap 141 R.E 2019] and rule 45(a) of the Tanzania Court of Appeal Rules, 2009 GN No. 368 amended by GN No.

362 of 2017 and GN No.344 of 2019 together with any other enabling provisions of the law. According to the affidavit deposed in support of the application, the applicant in paragraph 4 has raised the following grounds that require certification;

1. Whether the court was legally proper to extend the time of an appeal *suo motu* without setting aside the order of the 1<sup>st</sup> appellate court which ruled that the 1<sup>st</sup> appeal was out of time.
2. Whether the court legally exercised its revision power by discussing facts of the case and make the judgment *suo motu* without affording opportunity to the parties to address on the said facts.
3. Whether the 1<sup>st</sup> appellate court was having jurisdiction to determine the merit of the appeal while the same ruled that the appeal was out of time.

On 13<sup>th</sup> September 2021, when the application was called for hearing of the application, Mr. Akram Adam, learned Advocate represented the applicant while the respondent appeared in person. Called upon to make his submission, the learned counsel for the applicant prayed that the chamber summons and the affidavit filed in support of the application be adopted to form part of his submission.

Arguing in support of ground one for certification, the learned counsel submitted that, it was not proper for the High Court to extend time *suo motu* without first setting aside the order of the 1<sup>st</sup> appellate court which regardless holding that the appeal was time barred, it proceeded to hear the same.

On the second ground for certification, counsel argued that he had raised many grounds of appeal one of them being that the parties were not afforded the right to be heard and that the High Court did not go into the merit of the appeal but it revised the matter without calling upon parties to address the court on the facts as reflected by the evidence in the Primary Court.

Regarding the third and last ground for certification, the learned counsel for the applicant's concern is whether the 1<sup>st</sup> appellate court had jurisdiction to determine the merit of the appeal while it had already ruled that the appeal was out of time. He was of the view that that was contrary to section 3(1) of the Law of Limitation Act, [Cap 89 R.E 2019 which requires that any appeal found to be out of time be dismissed.

Replying to the submission in chief, the respondent stated that passing through the applicant's affidavit; he strongly disputes the fourth paragraph and its sub paragraphs. He prayed that this court look into

the truthfulness of the explanations given in the said paragraph. He submitted further that the court was fair in extending time and prayed that this application be dismissed with costs.

Given an opportunity to make a rejoinder, the learned counsel for the applicant simply prayed that the submission in chief be adopted.

Having summarized the parties' submissions for and against the application, it is important to point out that certification on points of law for appeal purposes is not automatic, this court is required to go through the said points raised and proposed to be certified and satisfy itself that the same merits to be points of law for certification for consideration by the Court of Appeal of Tanzania. In this application, the court needs to examine the points as contained in paragraph four of the affidavit with a view to satisfying itself that the proposed points qualify to be certified. It should also be noted that in its duty to satisfy itself as to whether the said points merits certification, this court should not turn itself the Court of Appeal, its role must be confined to just identifying the point to that of law, and certify it.

Starting with the first point, the major concern of the applicant is whether it was proper for the High Court to extend time, *suo motu*, without first setting aside the order of the first appellate court that the

first appeal was time barred. This to me is a legal point, it is therefore certified as such.

With regard to the second point for certification, the applicant wants the Court of Appeal to look into and determine the issue whether it was proper for the court to exercise its power to *suo motu* discuss facts of the case and make judgment basing on those facts without first affording opportunity to the parties to address on those facts. I also find this one to be a point of law, worth for consideration by the Court of Appeal, it is also certified.

In the last point proposed for certification, the applicant's concern is whether the first appellate court had jurisdiction to hear and determine the appeal after it had ruled that the same was time barred. This also qualifies as a point of law for certification purposes.

In the upshot, this application is allowed. All three points proposed by the applicant which are:

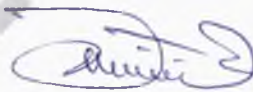
- (i) Whether the court was legally proper to extend the time of an appeal *suo motu* without setting aside the order of the 1st appellate court which ruled that the 1st appeal was out of time,

- (ii) Whether the court legally exercised its revision power by discussing facts of the case and make the judgment *suo motu* without affording opportunity to the parties to address on the said facts,
- (iii) Whether the 1st appellate court was having jurisdiction to determine the merit of the appeal while the same ruled that the appeal was out of time,

are hereby certified as the points of law to be considered by the Court of Appeal. Given the nature of the application, the costs be in due course.

It is accordingly ordered.

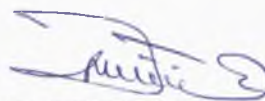
**DATED at MWANZA this 27<sup>th</sup> day of September, 2021**



**J. C. Tiganga**

**Judge**

Ruling delivered in open chambers in the presence of Mr. Acram Adam for the applicant and respondent in person on line through audio teleconference.



**J. C. TIGANGA**

**JUDGE**

**27/09/2021**