

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

**ARUSHA DISTRICT REGISTRY**

**AT ARUSHA**

**MISC. CIVIL APPLICATION NO. 37 OF 2020**

**(Originating from Arumeru District Court, Civil Appeal No. 25 of 2016)**

**LEONARD KERAINÉ ..... APPLICANT**

**VERSUS**

**LOY ELIAS.....RESPONDENT**

**RULING**

11/8/2021 & 22/9/2021

**ROBERT, J:-**

The Applicant, **Leonard Keraine**, moved this Court under section 25 (1) (b) of **the Magistrate's Court Act**, Cap. 11 (R.E 2002) and Rule 3 of the **Civil Procedure (Appeal in Proceedings Originating in Primary Courts) Rules**, 1963 G.N No. 312 of 1964 seeking an order for extension of time to file an appeal to this Court against the decision of Arumeru District Court in Civil Appeal No. 25 of 2016 dated 22<sup>nd</sup> February 2017. The application is supported by an affidavit sworn by the Applicant.

On 13<sup>th</sup> April, 2021 when this application came up for hearing, the Applicant was represented by Mr. Severin John Lawena, Learned Counsel. Mr. Lawena also held brief for Mr. Elibariki Maeda, learned counsel for the Respondent. Hearing proceeded by way of written submissions as successfully prayed by parties.

Submitting in support of the application, Mr. Lawena argued that, section 25 (1) (b) of the **Magistrates' Courts Act**, Cap. 11 R.E 2002 and Rule 3 of the **Civil procedure (Appeals in proceedings Originating in Primary Courts) Rule**, 1963 G.N No. 312 of 1964 prescribes time limit for appeals on matters originating from a primary court to be thirty days, however, the court may extend time on sufficient cause being shown by the Applicant.

~~He submitted that, the Applicant's delay to file his appeal was caused by late supply of copies of Ruling and drawn order and the Applicant's efforts to seek legal assistance. He maintained that, the copy of the Ruling and the Drawn Order was important in proving that the previous appeal was struck out on technical grounds. He recounted that, the first appeal was filed within time but it was misplaced due to the negligence of court officials at the district court's registry. He clarified that, the time taken from dismissal of the second appeal to the date of filling~~

In order to hammer his point, he cited the case of **Salima Vuai Fom vs. Registrar of Corporation Societies and Others** [1995] TLR 75, where the CAT stated,

*"Where an affidavit is made on information it should not be acted upon by any Court unless the sources of information are specified"*

He argued that, since the source of information is not specified under the said affidavit, this court should not act upon it but expunge it from the record.

Secondly, he submitted that paragraph 16 of the Applicant's affidavit contains arguments and opinions which is contrary to the law. He referred the court to the case of **Jumuiya ya Wafanyakazi vs Shinyanga Region Cooperative Union** (1997) TLR 22) where the Court held that:

*"An affidavit is essentially a substitute for oral evidence and should only contain statements of fact and circumstances. That being the case then we hold in common with Sir Udo Udoma CJ in case of Uganda vs Commissioner of Prisons, Exparte Matovu (1966) EA 514 to which we have been referred such an affidavit must not contain extraneous matters by way of objection or prayer or legal argument or conclusion."*

Thirdly, he argued that, the jurat did not contain the name of the person who attested the affidavit which is contrary to section 8 of the **Notaries Public and Commissioner for Oath Act** [Cap 12 R.E 2019].

application is marred with irregularities alleged by the learned counsel for the Respondent.

First, Mr Maeda argued that the affidavit supporting this application bears defective verification clause because it generalizes all information contained in the affidavit to come from the Applicant's knowledge while paragraph 7 of the affidavit contains advice from the Applicant's lawyer, paragraph 10 contains information from the court registry and paragraph 12 and 13 provides for information received from a person at the registry office.

Having perused the affidavit in support of this application, this Court noted, as stated by the learned counsel for the Respondent that, at the end of the affidavit the Applicant verified that all information contained in the affidavit is true and correct to the best of his knowledge. It states as follows:

*"I, LEORNALD KERAINÉ, being the Applicant herein verify that what I stated in paragraph 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16, 17,18 and 19 herein above is true and correct to the best of my knowledge."*

The Applicant's affidavit, being a substitute for oral evidence, contain statements of facts and circumstances to which the witness deposes either of his own personal knowledge or from information which he believes to be true, the Applicant's verification clause should therefore

Secondly, on the issue that paragraph 16 of the affidavit contains arguments and opinions, having looked at the contents of the said paragraph, it is clear that the contents of the said paragraph deposed arguments and allegations against the Court clerk on what the Applicant regarded as cheating based on directives he received from the said Court Clerk. I agree with Mr. Maed that the cited paragraph deposed arguments and which is contrary to law. Thus, the contents of paragraph 16 of the affidavit in support of the application are hereby expunged.

Thirdly, the learned counsel alleged that, the jurat did not contain the name of the commissioner for oath as required by Section 8 of the **Notaries Public and Commissioner for Oath Act** [Cap 12 R.E 2019]. The said provision reads;

*"Every notary public and commissioner for oaths before whom any oath or affidavit is taken or made under this Act shall insert his name and state truly in the jurat of attestation at what place and on what date the oath or affidavit is taken or made."*

Having gone through the affidavit supporting the application particularly in the jurat of attestation, I have noted that the Commissioner

In the circumstances, I find the affidavit in support of this application to be marred with irregularities. As a consequence, I hereby struck out this application for being incompetent as it was supported by a defective affidavit.

It is so ordered.



  
K.N. ROBERT  
JUDGE  
3/9/2021