

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. CIVIL APPLICATION NO. 64 OF 2020**

(Originating from PC Civil Appeal No. 3/2012, High Court of Tanzania at Arusha, Civil  
Appeal No. 47/2011, Probate and Administration Cause No. 27/1996)

**MGENI ALLY .....1<sup>ST</sup> APPLICANT**

**YUSUPH MACHA .....2<sup>ND</sup> APPLICANT**

**VERSUS**

**SELEMANI ALLY HATIBU .....1<sup>ST</sup> RESPONDENT**

**NAPAKU ENTERPRISES ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

17/5/2021 & 25/6/2021

**ROBERT, J:-**

The applicants herein moved this court under the provisions of section 5(1)(c) of the Appellate Jurisdiction Act, Cap. 141 of the Laws and Rules 10, 45(a) and 47 of the Court of Appeal Rules, 2009 (G.N. No. 36/2010) seeking to be granted an order for extension of time to file

Notice of Appeal out of time to the Court of Appeal of Tanzania against the Ruling and Order of this Court (Hon. F.H Masengi, J) in Civil Appeal No. 3 of 2012 dated 15<sup>th</sup> January, 2013. The application is supported by an affidavit sworn by Mr. Mgeni Ally, the first applicant and resisted by the respondents who filed their respective counter-affidavits to that effect.

At the hearing of this application the applicants were represented by Mr. Michael Lugaiya, learned counsel whereas the first and second respondents were represented by Messrs Method Kimomogoro and John Mseu, learned counsel respectively. At the request of parties, the Court ordered parties to argue the application by way of written submissions.

Having perused the application and submissions from parties for and against this application, this Court invited parties to address the Court whether the Court was properly moved to determine this matter by the enabling provisions cited to move the Court to make a determination of this matter.

Counsel for the applicants, Mr. Lugaiya conceded that having read the provisions cited to move the Court to determine this application he is convinced that the Court is not properly moved but left it for the Court to determine the fate of this application. Similarly, the first respondent left it

to the Court to determine the fate of this application as it deems appropriate while the second respondent did not enter appearance.

It is apparent that, while the applicants seek to be granted extension of time to file Notice of Appeal to the Court of Appeal of Tanzania, the provisions cited to move this Court to determine this matter provides for leave to file an appeal to the Court of Appeal in civil cases. In the circumstances, the Court is not properly moved to make a determination on this matter. Thus, I find this application to be incompetent before this Court.

Consequently, this application is hereby struck out for being incompetent. Given the relationship of parties in this application and the fact that the application is disposed of by an issue raised by this Court, I give no order for costs.

It is so ordered.



K.N. ROBERT  
JUDGE  
25/6/2021