

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 609 OF 2021

SAID KIPAGAME KASWELA APPLICANT

VERSUS

MOSHI ALFANI RESPONDENT

**(Arising from the decision of this Court (Mruma, J.)
in Civil Revision No. 4 of 2021)**

RULING

20th and 20th April, 2022

KISANYA, J.:

When this application for leave to appeal to the Court of Appeal was called on for hearing today, I implored the parties to address this Court on whether the application is timeous. The said issue finds its basis on the provision of rule 45(a) of the Court of Appeal Rules, R.E. 2019 (henceforth “the Rules”) which requires the application for leave to appeal to the Court of Appeal to be filed within thirty days of the date of impugned decision of the High Court.

A brief factual background of the matter may be useful in order to understand the basis of the issue under consideration. The ruling of this

Court (Mruma J.) subject to the intended appeal to the Court of Appeal was delivered on 27th September, 2021. The applicant deposed in the supporting affidavit that he has already filed a notice of appeal to the Court of Appeal in order to challenge the said ruling. However, the present application for leave to appeal to the Court of Appeal was filed on 29th November, 2021 as per receipt of the court filing fee, thereby leading to the issue whether it was filed within time prescribed by the law.

Responding to the issue raised by the Court, the appellant who appeared in person admitted that the impugned ruling was delivered on 27th September, 2021. He went on to contend that the copies of ruling and drawn order were supplied to him in late November, 2021. In that regard, he urged this Court to consider that he was not in a position of lodging the application without being availed with the copies of the ruling and drawn order subject to this application.

On his part, the respondent who also appeared in person was of the view that the application is time barred.

Having heard the submissions made by the parties, the issue for determination is whether the application is timeous.

As indicated herein, the time within which to file an application for leave to appeal to the Court of Appeal is thirty days counted from the date of impugned decision of the High Court. This is pursuant to rule 45(a) of the Rules which stipulates:

"45. In civil matters-

(a) where an appeal lies with the leave of the High Court, application for leave may be made informally, when the decision against which it is desired to appeal is given, or by chamber summons according to the practice of the High Court, within thirty days of the decision;

Therefore, since it is not disputed that the decision against which it is desired to appeal was delivered on 27th September, 2021, the applicant ought to have applied for leave to appeal to the Court of Appeal on or before 26th October, 2021. However, it was on 23th November, 2021 when the applicant deponed the supporting affidavit. Thereafter, he filed the present application on 29th November, 2021 and thus, out of time for about 32 days. In terms of the settled law, every day of delay is required to be accounted for. Otherwise, the courts have no mandate to determine a matter filed out of time prescribed by the law.

I have also considered the applicant's submission that the application was filed after being supplied with the copies of the ruling and drawn order. Pursuant to the proviso of rule 45 of the Rules, the time required to obtain the copy of impugned decision is excluded where the application for leave is sought in the Court of Appeal and not this Court. It is my considered view that his argument is relevant when considering the application for extension of time to apply for leave to appeal to the Court of Appeal and this Court.

In the result, the application is hereby struck out for being time barred. The applicant is advised to file an application for extension of time. Considering that the application is determined basing on the issue raised by the Court, *suo mottu*, I make no order as to costs.

DATED at DAR ES SALAAM this 20th day April, 2022.



S.E. Kisanya
JUDGE

Court: Ruling delivered this 20th day of April, 2022 in the presence of the applicant and respondent.



S.E. Kisanya
JUDGE