

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA

APPLICATION No. 127 OF 2021

(Originating from (PC) Probate Appeal No. 12 of 2020)

ROSE NESTORY KABUMBILE APPLICANT

VERSES

GIBSON KABUMBILE RESPONDENT

RULING

13/6/2022 & 5/8/2022

ROBERT, J:-

The applicant, Rose Nestory Kabumbile, moves this Court to certify that a point of law is involved in the decision of this Court worth of determination by the Court of Appeal of Tanzania. The application is grounded on the reasons contained in the affidavit sworn by the applicant in support of this application. The respondent, on the other hand, lodged his counter-affidavit opposing this application and raised a preliminary objection on the point of law to the effect that:

- 1. The application before this Court is time barred as it was filed beyond 30 days as required by the law.*

As a matter of practice, parties in this application were invited to address the Court on the point of objection raised by the respondent

before proceeding with the application in case the objection is not sustained.

At the hearing of this objection on 20th April, 2022, the applicant appeared in person unrepresented whereas the respondent was under the services of Mr. Mushongi, learned counsel. At the request of parties, the objection was argued by way of written submissions.

Amplifying on the point of objection, the learned counsel for the respondent without making reference to a specific law submitted that, the law requires that an application for a certificate on the point of law has to be made within 30 days from the date of the decision sought to be challenged. He maintained that, the decision sought to be challenged was pronounced on 13/08/2021 and this application was filed on 14/09/2021 which is out of the prescribed period of 30 days as required by the law. To support his argument, he referred the Court to the case of **Samwel Munsiro Vs Chacha Mwikwabe**, Civil Application No. 539/08 of 2019, CAT at Mwanza (unreported) where the Court of Appeal granted an extension of 30 days for the applicant to file an application for certificate on a point of law.

In response, the applicant was in agreement with the learned counsel for the respondent that the prescribed time for filing an

application for certification on a point of law is 30 days. However, he maintained that, the said 30 days starts to count after excluding the day the said judgment was entered. She clarified that, since the challenged decision was pronounced on 13/08/2021, counting of the days started on 14/08/2021 which makes 14/09/2021 its 30th day. Hence, he maintained that, the application was filed on the deadline and therefore not time-barred as claimed by the respondent.

In his rejoinder, the learned counsel submitted that the applicant has admitted to have filed his application out of the 30 days prescribed time. He insisted that, counting of the days starts from the date of delivery of judgment sought to be challenged.

After hearing both parties' submissions, it appears to this Court that the question for determination is whether this application is time-barred and therefore incompetent.

Section 5 (2) (c) of the Appellate Jurisdiction Act, Cap. 141 (R.E. 2019) requires every appeal to the Court of Appeal of Tanzania against any decision or order of the High Court on a matter originating from the Primary Court to be certified by the High Court that a point of law is involved in the decision or order sought to be challenged. In doing so, the court of Appeal Rules, especially Rules 46(1), requires that where an

application for a certificate is necessary, it shall be made after the notice of appeal is lodged.

Rule 83(2) of the Court of Appeal Rules prescribes the time limit for filing a notice of appeal to be within thirty days from the date of the decision sought to be challenged. However, the law does not set a specific time for applying for a certificate on the point of law (*see the case of Omari Rwechungura Kakweke Vs Evarist Magoti* Misc. Land Application No. 1 OF 2022). This necessitates the court to resort to the **Law of Limitation Act**, Cap 89 R.E. 2019, whereby item 21 of **Part III** of the Schedule to the Act, provides that:

"Application under the Civil Procedure Code, the Magistrates' Courts Act or other written law for which no period of limitation is provided in this Act or any other written law time limitation will be sixty days"

This Court finds and holds that, since the notice of appeal was filed within the required time, and the relevant statutes are silent on the limitation of time to institute the applications of this nature, the same has to be preferred under item 21 of Part III of the Schedule to the **Law of Limitation Act** (Supra), which provides for 60 days from the time when the sought judgment to be challenged was delivered. It should also be

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noted that, in computing the period of limitation for any proceeding, the day from which such period is to be computed is excluded pursuant to section 19(1) of the Law of Limitation Act.

In the instant application, it is not disputed that, the decision sought to be challenged was delivered on 13th August, 2021 and this application was lodged in this court on 14th September, 2021, which is within the 60 days prescribed time after the delivery of the said decision. Hence, this application is filed within the prescribed time.

In the circumstances, I find the respondent's objection lacking in substance. Consequently, it is hereby dismissed with costs. The application proceeds with hearing on merit.

It is so ordered.




K.N. ROBERT
JUDGE
5/8/2022