

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA
MISC. CIVIL APPLICATION NO. 24 OF 2021**

**SADALLAH IBRAHIM SADALLAH
EGID M. SANGA**

.....**APPLICANTS**

VERSUS

DODOMA MUNICIPAL COUNCIL.....RESPONDENT

(Origination from Misc. Civil Application No. 43 of 2016 & Civil Application No.14 of 2004 & DC. Civil Appeal No.3 of 1999 & Civil Case No.58 of 1996 of the District Court of Dodoma at Dodoma)

.....

RULING

14thJuly&12thAugust,2022

MDEMU, J:.

This is an application for extension of time to lodge notice of appeal and leave to appeal to the Court of Appeal. On receipt of the chamber summons and the affidavit, the Respondent filed a notice of preliminary objection on 11th of April, 2022 such that:

The application is irredeemably incompetent and thus unmaintainable before the court having been lodged as an omnibus application.

I had first to resolve this objection and on 14th of July, 2022, appeared before me Mr. Elias Subi, learned Advocate for the Applicants and Mr. Camillius Ruhinda, learned Senior State Attorney for the Respondent arguing the preliminary objection.

In support of the preliminary objection, Mr. Camillius Ruhinda submitted that; in this application, there are two prayers in one. There is an application for extension of time to lodge notice of appeal for appealing to the Court of Appeal and two, extension of time for leave by this Court to appeal to the Court of Appeal. He thought this is bad in law thus cited the case of **Ali Chamani vs. Karagwe District Council, Civil Application No. 411/4 of 2017** and also **Rutagatina C.L. vs. the Advocates Committee and Clavery Mtindo Ngalapa, Civil Application No.98 of 2010** (both unreported) in support of his assertion.

He added further that, in the affidavit which centres on extension of time, if the Applicant is denied enlargement of time to file notice of appeal, then the other prayer on leave will also suffer. He thus thought this application be struck out for being incompetent.

In reply, Mr. Elias Subi observed that, the preliminary objection is baseless hence the cases of **Ali Chamani vs. Karagwe District Council**(supra) and that of **Rutagatina C.L. vs. the Advocates Committee and Clavery Mtindo Ngalapa** (supra) are distinguishable.

In all, he said, omnibus application in the nature of extension of time to lodge notice and leave is not illegal. His stance rests on an observation that, the two prayers are interrelated and that having separate prayers leads to multiplicity of suits. He cited in this the case of **Pride Tanzania Ltd. vs. Mwanzani Kasatu Kasamia, Misc. Commercial Application No.230 of 2015** (unreported) in support of this position. He thus thought the application is competent.

In rejoinder, the learned Senior State Attorney submitted that, in **Rutagatina's case**, particularly at pages 4-5, application for extension of time and leave to appeal are not interrelated. The reason, in his view, is that in extension of time, one has to show sufficient cause, which isn't a ground in leave to appeal. He also added that, section 11(1) of the Appellate Jurisdiction Act, Cap. 141 in which this application is brought, requires separate application through the word "OR" used in drafting the section.

Having heard from the parties, the issue is whether one may apply in one application, for extension of time for both lodgement of notice to appeal and leave to appeal to the Court of Appeal. In the case of **Ali Chamani vs. Karagwe District Council**(supra) regarding omnibus application, the Court of Appeal, at page 6 of the judgment, made the following observation:

*After having dispassionately examined the notice of motion and the reliefs sought by the applicant, I agree with Mr. Kabunga together with the applicant's concession that the application is not properly before the court because of being omnibus. I say so because, it seeks three distinct reliefs which are: **one**, extension of time to give notice of appeal against the High Court decision; **two**, extension of time to file an application for leave to appeal to the Court of Appeal; and **three**, leave to appeal to the Court of Appeal. This application goes contrary to the spirit of Rules 44-66 which govern applications as they each provide for a distinct application according to the type or category of relief sought.*

Much as the position above was on the application before the Court of Appeal, phraseology of section 11 (1) of the Appellate Jurisdiction Act is

coached in such a way that, an application for extension of time to lodge notice of appeal and that one for leave to appeal have to be made distinctly. For clarity, the said section is reproduced as hereunder:

11.-(1) Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate Court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired.

The reasons for having distinct applications are that, **one** under Rule 46 of the Court of Appeal Rules, 2009, application for leave must be made after the Applicant has lodged first the notice of appeal. The Rule is reproduced as hereunder:

46. Where an application for a certificate or for leave is necessary, it shall be made after the notice of appeal is lodged

Two, in an application for extension of time to file notice of appeal, the Applicant must show sufficient cause to warrant the Court, exercising its discretion power, to grant or refuse. In leave to appeal, the case of **Rudolf Temba and Another vs. Zanzibar Insurance Corporation, Civil Application No. 167 of 2008** (unreported) stated that:

"Leave to appeal will be granted where the grounds of appeal raise issues of general importance, a novel point of law or where the grounds show a prima facie or arguable appeal"

Three, the phraseology of section 11(1) of the Appellate Jurisdiction Act requires separate applications be made. As said above, grounds for extension of time differs materially to that of leave to appeal. In **Shanti v. Hindocha and Others [1973] E.A, 207** it was held that: -

"The position of an application for extension of time is entirely different from that of an application for leave to appeal. It is concerned with showing sufficient reasons why he should be given more time and the most persuasive reason that he can show that the delay has not been caused or contributed to by dilatory conduct on his part. But there may be other reasons

and these are matters of degree. He does not necessarily have to show that his appeal has a reasonable prospect of success or even that he has an arguable case”.

Four, the prayers are not interrelated as to require an omnibus application. That said, the preliminary objection is hereby sustained. As observed by Mr. Ruhinda, this application is incompetent and is accordingly struck out. Each party to bear own costs.

It is so ordered.



Gerson J. Mdemu

JUDGE

12/08/2022

DATED at DODOMA this 12th day of August, 2022



Gerson J. Mdemu

JUDGE

12/08/2022