

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DODOMA DISTRICT REGISTRY)**

AT DODOMA

MISC. CIVIL APPLICATION No. 35 OF 2021

(Originating from Matrimonial Appeal no. 8 of 2020 in the High Court of Tanzania at Dodoma)

MAX HASSAN OMARY.....APPLICANT

VERSUS

ZAINABU KALENGA.....RESPONDENT

RULING

13/6/2022 & 11/7/2022

MASAJU, J

The Applicant, Max Hassan Omary, has filed in the Court a Chamber Summons Application made under section 11(1) of the Appellate Jurisdiction Act [Cap 141] read together with Rule 47 of the Tanzania Court of Appeal Rules seeking leave of the Court to file a Notice of Appeal to the Court of Appeal of Tanzania against the decision of the Court in Civil Appeal No 8 of 2020, in an extended time. The Application is supported by an Affidavit affirmed by Mr. Ubaidi G. Hamidu, the Applicant's learned counsel.

The Respondent, Zainabu Kalenga contests the Application. She filed a Counter Affidavit to that effect.

When the Application was heard in the Court on the 13th day of June 2022 both parties were represented. The Applicant was represented by Mr. Ubaidi Hamidu, the learned Advocate while the Respondent was in the service of Mr. Mussa Chemu, the learned Advocate.

The Applicant prayed to adopt his Affidavit to form part of his submissions in support of the Application in the Court. The Applicant cited legal authorities in support of the Application thus, **Ghania J. Kimambi V. Shedrack Ruben Ng'ambi (HC Labour Division) Miscellaneous Application No. 692 of 2018, Dar es Salaam** that the Advocate's errors should not be a punishment to his client, that right to be heard is constitutional. **Kambona Charles (as administrator of the Estate of the late Charles Pangani) V. Elizabeth Charles (CAT) Civil Application No. 529/17 of 2019, Dar es Salaam Registry**, that the advocates error should not be a punishment to his client.

The Applicant prayed the Court to grant the Application accordingly. On his part, the Respondent, contested the Application by submitting that the reasons given are not meritorious. That, there was no documentary proof of the medical sheets or proof of death of the deponent's relatives to that effect. That, the Applicant was being

represented by a law firm hence another lawyer could have attended the client accordingly in absence of the learned counsel, according to **Bruno Wencenslaus Nyalifa V. The permanent Secretary, Ministry of Home Affairs and the AG (CAT) Civil Appeal No. 82 of 2017 Arusha Registry**. The Respondent prayed the Court to dismiss the Application for want of merit.

That is what was shared by the parties in support of, and against the Application.

The reasons for the Applicant's delay in filing his intended Notice of Appeal, if any, to the Court of Appeal have been deponed in paragraphs 6 and 7 of the Affidavit. That, the Applicant's Advocate encountered some family problems that is death of his uncle and aunt hence had to attend to the funeral services in Karagwe and failed to file the Notice of Appeal. That, thereafter, the said advocate decided to file an Application for extension of time to file the Notice of Appeal in the Court of Appeal which was struck out of the said Court for want of competence, hence the Application in this Court.

The Court is of the considered position that, although the reasons for the delay in filing Notice of appeal to the Court of Appeal have no

documentary proof as submitted by the Respondent but there is no any other evidence on record which contradicts the said reasons.

The Applicant did not sleep on his right after the 1st Application was struck out by the Court of Appeal as he filed this Application in the Court right in time. Hence the decision of the Court in **Bruno Wencenslaus Nyalifa V. The Permanent Secretary, Ministry of Home Affairs and the AG** (Supra) as submitted/cited by the Respondent is distinguishable as regards the instant case. The Court finds further that, indeed, the Applicant should not be punished for his advocate's mistakes and delay in filing the intended Notice of Appeal to the Court of Appeal.

That said, the meritorious Application is hereby granted. The Applicant shall file his intended Notice of Appeal to the Court of Appeal within 30 days from the date of this Ruling. The parties shall bear their own costs.



GEORGE. M.MASAJU

JUDGE

11/7/2022