

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA

MISC. LAND APPLICATION NO. 20 OF 2021

(Arising from the High Court of Tanzania, at Mbeya in Land Appeal No. 69 of 2019. Originated in the District Land and Housing Tribunal for Mbeya at Mbeya in Land Application No. 5 of 2017)

SOSTEN MBWAGHA.....APPLICANT

VERSUS

BIRIA SIMBWANGO.....1ST RESPONDENT

JUMA SAMSON2ND RESPONDENT

RULING

Date of Last Order: 02.06.2022

Date of Ruling: 12.07.2022

Ebrahim, J.

The applicant SOSTEN MBWAGHA instituted the instant application seeking for an order of extension of time within which to lodge an application for leave to appeal to the Court of Appeal of Tanzania. The application was made under section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 R.E 2019 (the AJA); and it was supported by an affidavit sworn by the applicant.

Brief facts of the case are that; in the DLHT through Land Application No. 5 of 2017 the applicant had instituted land application against the two respondents, i.e Biria Simbwango and Juma Samson claiming a piece of land located at Mwantenga

Village in Mbarali District. He lost the case. He appealed to this Court through Land Appeal No. 69 of 2019, he lost again. Still discontented, the applicant desired to appeal to the CAT. Realising that he was late to lodge application for leave of this court, he preferred the instant application.

The application was disposed of by way of written submissions. The applicant was represented by advocate Moses Mwampashe, whereas the respondents appeared in person, unrepresented.

Submitting in support of the application, advocate Mwampashe prayed to adopt the affidavit of the applicant to form part of his submission. In essence the affidavit deponed that the applicant delayed because he was availed with copies of proceedings and judgment by this court late. It is further deponed that the applicant was unaware of the requirement of the law that to appeal to the CAT in a second appeal he needs to obtain leave.

In addition, advocate Mwampashe contended that since the applicant's delayed was contributed by the court i.e in delaying to supply him with the copies of the proceedings and

judgment, denying the grant of this application to the applicant would amount to punishing for default not caused by him. To justify his contention, advocate Mwampashe cited the case of **Tanzania Revenue Authority vs Tango Transport Company Ltd**, Civil Application No. 5 of 2006. According to advocate Mwampashe the applicant has demonstrated sufficient reasons for grant of this application he thus prayed for the same.

In reply, the respondents firstly raised the concern that the applicant's application is incompetent since it contravened **Rule 46 (1) of Tanzania Court of Appeal Rules, 2009** which requires the application for leave to be made after notice of appeal is lodged. The respondents contended that in the instant application the applicant neither lodged notice of appeal nor did he serve it to them. Hence, if this court extends time, it will serve no useful purpose as he will not be able to lodge the application for leave in the absence of notice of appeal. From their concern, the respondents prayed for this court to strike out the application.

Arguing further against the application, the respondents submitted that the applicant has failed to give sufficient reasons for this court to grant the application. According to them, the applicant did not prove that he applied for the copies of

judgment and proceedings since he neither served the respondents with the letter for application nor attach it with his affidavit.

The respondents further argued that, an application for leave does not require one to attach copies of proceedings and judgment. This is due to the reason that the law allows the same even to be applied orally. On that, they relied on **Rule 45 (a) of the CAT Rules of 2017**. According to respondents, the applicant had an opportunity to apply for leave without copies of judgment and proceedings.

Moreover, the respondent argued that the applicant did not account for each day of delay from when he received the copies i.e on 17/03/2021 to when he filed this application on 12/04/2021. To cement their argument, the respondents cited the cases of **Robert Nyengela vs Republic**, Criminal Application No. 42/13 of 2019 CAT at Iringa and **Ramadhani I. Kihwani vs Tazara**, Civil Application No. 401/18 of 2018 CAT at Dar es Salaam (both unreported). The respondents thus urged this court to dismiss this application with costs.

I have considered the submissions by the parties. Starting with the legal issue raised by the respondents on the competence of the application; indeed, **Rule 45(1) of the CAT Rules** requires an application for leave of this Court to be lodged within 30 days from the date of the decision.

Equally true is that **Rule 46(1)** of the same Rules requires the application to be filed after lodging a notice of appeal. The respondents are challenging the application at hand on the ground that there was no notice of appeal which was lodged by the applicant. However, para 5 of the applicant's affidavit states that he lodged notice of appeal and attached it to the affidavit as **annexure SM3**. The notice is conspicuous in the records dated 18th day of January, 2021. It is my position that whether the notice was supposed to be served to the respondents or not is not an issue to be decided in this very application. This is because, the application at hand is for extension of time which is granted discretionary and upon a party demonstrating sufficient reasons. **Section 11(1) of AJA** which provides that:

"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.

From the above position, the issue for consideration is whether the applicant has demonstrated sufficient reasons for this court to grant the application.

Stating at the outset, it is the law that in computing time required in taking action, the time spent in securing copies of proceedings, judgment, or order appealed against is excluded the position is provided under **Section 19 (2) of the Law of Limitation Act, Cap. 89 R.E 2019;** and elaborated in the case of **Samuel Emmanuel Fulgence vs Republic**, Criminal Appeal No. 4 of 2018 [2019] TZCA 380 (Tanzlii).



In the instant application a copy of judgment attached to the applicant's affidavit as annexure SM1 shows that it was certified and ready for collection on 17/03/2021. Thus, Thirty days required in filing application for leave expired on 17/04/2021. Nevertheless, the present application was filed in court on

12/04/2021 meaning that the applicant was still within prescribed time. It seems however, according to para 6 of the affidavit, the applicant mistakenly knew that the time required for making application for leave is fourteen (14) days. That is why he made the present application. In essence the instant application is a misconception in computing the time.

Following the fact that the applicant's application was a misconception I see no reason to subject his reasons for delay into scrutiny.

On the premises therefore, I hereby extend time for thirty (30) days for the applicant to file the application for leave to appeal to the Court of Appeal against the decision of this court.

Ordered accordingly.

 
R.A. Ebrahim
JUDGE
Mbeya
12.07.2022

Date: 12.07.2022.

Coram: Hon. A.P. Scout , Ag-DR.

Applicant: Present.

For the Applicant: Absent.

1st Respondent: } Present.

2nd Respondent: }

B/C: Patrick Nundwe.

Court: Ruling is delivered in the presence of the Applicant and the Respondents, Court Clerk in chamber court on 12/07/20.



A.P. Scout

Ag-Deputy Registrar

12.07.2022

DEPUTY REGISTRAR
HIGH COURT OF TANZANIA
MBEYA