

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

AT MBEYA

MISCELLANEOUS LAND APPLICATION NO. 99 OF 2021

(Originating from the High Court of Tanzania at Mbeya Land Case No. 20 of 2017)

HENRY JALISON MWAMLIMA APPLICANT

VERSUS

ROBERT JALSON MWAMLIMA AND CHRISTINA JALISON MWAMLIMA

(As Administrators of the Estate of the Late Jalison Mwamlima)

..... **1ST RESPONDENT**

JALISON MWAMLIMA 2ND RESPONDENT

NBC BANK PLC 3RD RESPONDENT

VITUS MGAYA 4TH RESPONDENT

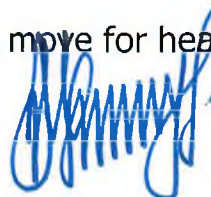
RULING

Date of last order: 25/07/2022

Date of ruling: 28/07/2022

NGUNYALE, J.

By way of chamber summons supported by an affidavit the applicant preferred the present application under section 11 (1) of The Appellate Jurisdiction Act Cap 141 R. E 2019 and section 95 of the Civil Procedure Code Cap 33 R. E 2019 seeking the Court to extend time upon which the applicant can serve the notice of intention to appeal to the 2nd and 3rd respondent. The application could not move for hearing on merit, instead



it was resisted by a notice of preliminary objection as filed by the 2nd respondent on point of law that; -

The High Court is not vested with jurisdiction to try the matter where appeal is preferred to the Court of Appeal.

The 2rd respondent was represented by Hamisa Hamza Nkya learned Counsel from Locus Attorneys and the applicant was enjoying the service of Boniface A. K. Mwabukusi learned Counsel from BAK MWABUKUSI & CHAMBERS ADVOCATE. The Counsels preferred the application to be heard by way of written submission, their prayer was blessed by the Court, both complied to the scheduling orders of the filing of written submissions.

Ms. Hamisa submitted that the law which provides for Notice of Appeal is Tanzania Court of Appeal Rules, 2009 Government Notice No. 368 at Rule 83 that;

'Any person who desires to appeal to the Court shall lodge a written notice in duplicate with the Registrar of the High Court.'

In the above provision the applicant complied, however, subsequently Rule 84 (1) of the Court of Appeal of Tanzania Rules 2009 provides mandatorily for service of the notice of appeal by the intended appellant to the respondents. The appellant complied only with service to the 1st respondent but did not serve the 2nd and 3rd respondents. In order for the



applicant to extend time under the Court of Appeal Rules which provides for notice of appeal and its service thereof he should comply to Rule 10 which provides; -

'The Court may, upon good cause shown, extend the time limit by these Rules or by any decision of the High Court or tribunal, for the doing of any act authorised or required by these rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended'

It was her further submission that Court as provided for under the Rules is to mean the Court of Appeal of Tanzania. The power conferred by the Court of Appeal Rules 2009, the Court being the Court of Appeal of Tanzania to extend time it does not give express or by implication such jurisdiction to the High Court of Tanzania to extend time for matters that are provided for in the Court of Appeal Rules, 2009. It was the view of the learned Counsel that the applicant having filed a notice of appeal to Court of Appeal of Tanzania, the High Court ceases to have jurisdiction to try the matter unless it falls within the exceptions allowed by the law. The current application does not fall within the allowed exceptions.

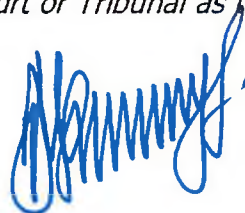


She submitted that once notice of appeal is filed to the Court of Appeal, the High Court jurisdiction ceases. He referred the Court to the case of **Mohamed Enterprises Tanzania Limited versus The Chief Harbour Master and the Tanzania Ports Authority**, Civil Appeal No. 24 of 2015, Court of Appeal of Tanzania at Dar es Salaam (unreported) where it pointed out that; -

'... after institution of the notice of appeal in this Court against the ruling on which the appellant's claim is founded, the High Court ceases to have jurisdiction on that proceeding.'

In reply he submitted that the submission by the 2nd respondent and the authority cited therein are devoid of merit as it misapprehended the law. He went on to argue further that the authority cited therein are distinguishable to the situation. He stated that the application is pegged under the provision of section 11 (1) of the Appellate Jurisdiction Act Cap 141 R. E 2019 and Section 95 of the Civil Procedure Act Cap 33 R. E 2019. Reading the provision of Section 11 (1) of the Appellate Jurisdiction Act Cap 141 and the provision of Rule 47 of the Tanzania Court of Appeal Rules reads: -

Whenever application is made either to the Court or to the High Court, it shall first instance be made to the High Court or Tribunal as the case may be ...



He humbly submitted that the application is properly before the Court on issue of applications in first instance, he invited this Court to subscribe itself to the Court of Appeal decision in the Civil Application No. 499/08 of 2020 between Patrick George (as an attorney of **Ramadhani Omari vs Zainabu Omari**):

'It is the law however under rule 47(1) of the Rules that, where jurisdiction to entertain an application is conferred on both this Court and the High Court, the application must first be made to the High Court. It is upon determination of the application at the High Court that, the applicant, if aggrieved, can file a fresh application to this Court as a second bite,'

Mr. Mwabukusi prayed the Court to dismiss the preliminary objection with costs.

In view of the rival submissions, essentially the parties desire is for settlement of the issue as to whether this Court has jurisdiction to determine the present application.

It is not in dispute that the applicant had earlier filed a notice of intention to appeal to the Court of Appeal, the 2nd respondent was of the view that after filing such notice to the Court of Appeal the High Court jurisdiction on the matter ceases. The position submitted by the 2nd respondent was strongly contested by the applicant who insisted that the High Court has



jurisdiction. The Court is to scrutinize the contended position in order to end up with the correct position of the law.

The application has been rooted from section 11 (1) of the Appellate Jurisdiction Act, Cap 141 R. E 2019 per chamber summons filed by the applicant. In order to understand the stance of the law I wish to reproduce the very provision that; -

*"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.**"*

Guided by the above provision it means the jurisdiction of the High Court in this provision is strictly to **one**, extending time for giving notice of intention to appeal and **two**, application for leave to appeal **three**, certifying on point of law. In all those scenarios above Notice of Appeal is yet to be filed to the Court of Appeal. Once a party is aggrieved by the decision of the High Court in reliefs stated in the above provision, he will on the first bit move the High Court through Rule 45A (1) of the Court of Appeal Rules. The applicant in the present application seeks extension of time to serve the respondents after the Notice of Appeal has been filed to



the Court of Appeal. With due respect to the submission of the applicant, the relief sought is not one of the reliefs which may be granted by moving the Court under section 11 (1) of the Appellate Jurisdiction Act. In my view the applicant has moved the Court by a wrong provision and the prayer raised has been raised to the court which has no jurisdiction.

It is settled law that once the Notice of Appeal has been filed to the Court of Appeal for the intended appeal the High Court jurisdiction ceases as correctly submitted by the 2nd respondent. Therefore, after the applicant failed to comply to Rule 84 (1) of the Court of Appeal of Tanzania Rules 2009 on mandatorily service of the notice of appeal to the other respondents he ought to seek extension of time under Rule 10 of the same rules which I wish to reproduce;

'The Court may, upon good cause shown, extend the time limit by these Rules or by any decision of the High Court or tribunal, for the doing of any act authorised or required by these rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended'

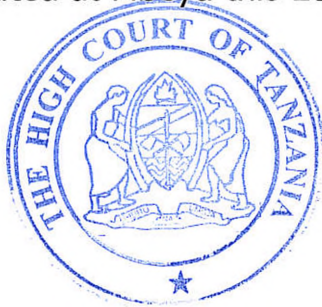
Rule 3 of the Court of Appeal Rules define the Court to mean the Court of Appeal of Tanzania. Therefore, under the above provision the Court means the Court of Appeal of Tanzania and not the High Court or any other Court as misconceived by the applicant. I therefore agree with the



2nd respondent that the Court being the Court of Appeal of Tanzania, to extend time it does not give express or by implication such jurisdiction to the High Court of Tanzania for matters that are provided for in the Court of Appeal Rules, 2009.

In the end result, I am of the settled view that the preliminary objection has merit, it is hereby sustained. Order accordingly.

Dated at Mbeya this 28th day of July, 2022.




D. P. Ngunyale
Judge