

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI**

CIVIL APPLICATION NO. 10 OF 2022

*(C/F Matrimonial Appeal No. 2 of 2021 in the High Court of Tanzania at
Moshi)*

ZIADA JUMA ATHUMANI..... APPLICANT

Versus

JUMA SAIDI NYORI..... RESPONDENT

Last Order: 12th July, 2022

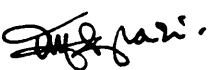
Date of Ruling: 23rd August, 2022

RULING

MWENEMPAZI, J.

This application has been brought under Rule 10, 45 and 46 of the Court of Appeal Rules. In the application the Applicant Ziada Juma Athumani is seeking for extension of time to apply for leave to appeal to the Court of Appeal of Tanzania and cost of the application. The applicant swore an affidavit in support of the application. The Respondent contested the application by filing a counter affidavit to that effect.

When the matter was set for hearing, the applicant prayed to file written submission as she could not afford the service of an advocate. For that


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reason, leave was granted for hearing to proceed by way of written submission in an ordered schedule.

In her brief submission in support of the application the applicant stated that on 13th September 2021 after this Honourable High Court delivered its judgment, she felt sick and was compelled to attend at Mawenzi Referral Hospital for treatments where she was advised to have a 7 days bed rest.

Expounding further on the reasons for the delay, she stated that on 20th September, 2021 she went again to the hospital where she was once again advised to have a three months bed rest on fear of COVID 19 decease. She supported her submission with a copy of medical certificate which she had attached in her affidavit supporting the application.

Concluding her submission, the applicant stated that she would like this Honourable Court to take into consideration that the cause of delay to file Application for leave to Appeal to the court of Appeal of Tanzanian was beyond her capacity based on the strength of what she elaborated in her application. Also, she added that she has substantial grounds to Appeal to the court of Appeal of Tanzania based on the grounds stated in her affidavit in support of the application under paragraph 9. She thus prayed for the application to be allowed with costs.

Responding to the Applicant's submission the Respondent started by first adopting the contents of his counter affidavit to form part of the submission. The Respondent then said having read the applicant's submission he was of the opinion that the same is not a submission at all but mere words which do not amount to a written submission and that the same cannot be

acceptable. He referred to the case of **Gervas Kulwa Masom.F Versus The Returning Officer Of Meatu And Others** [1996] TLR 320. He said in the cited case it was held that, a five-sentence written submission was not a submission at all, that in the entire submissions the Applicant did write something which was best known to himself which was not having reasons establishing the same, thus, not a submission at all, rather than reproducing the Applicant Affidavit in the document called a submission.

The Respondent submitted further and stated that according to the position of the law as provided for under **Rule 45(a) of the Tanzania Court of Appeal Rules** GN. No. 344 of 2019-time limitation for lodging an application for leave is 30 days after the decision is made. He went on submitting that the Judgment and decree of Pc. Matrimonial Appeal no. 2 of 2021 in the High Court of United Republic of Tanzania at Moshi was procured on 2nd day of September 2021 in presence of both parties but neither an application for leave to appeal to the court of Appeal nor an application for extension of time was lodged before this Honourable Court until 7th day of March, 2022, when the applicant surprisingly came up with an application seeking for extension of time.

It was the respondent's further submission that mathematically after the lapse of thirty days within which was a proper time to file an application for leave to appeal to the court of appeal there were more than 6 months which is also equivalent to 180 days which are subject to the current application seeking for time extension. The respondent argued that it is the requirement of the law, especially case law, that once any party to the case apply for the extension of time before the Court then the applicant should account for



each day of delay. He cited the case of ***Unilever Tea Tanzania Limited & Another Versus Miraji Mpira***, Misc. Civil Application NO. 21 OF 2017, High Court of Tanzania At Iringa District Registry (Unreported) in which the High Court referred to the decision of the Court of Appeal of Tanzania which set five guidelines that must be observed when granting extension of time as per the decision of ***Lyamuya Construction Company Limited Versus The Registered Trustees Of Young Women Christians Association Of Tanzania***, CIVIL APPLICATION NO. 2 OF 2010 CAT That is;

"(a) The applicant must account for all period of delay (b) The delay should not be inordinate (c) The applicant must show diligence, and not apathy negligence or sloppiness in the prosecution of the act that he intends to take, and (d) If the court feels that there are other sufficient reasons, such as existence of point of law of sufficient importance such as the illegality of the decision sought to be challenged".

It was his submission that the Applicant has failed to account for each day of delay. He contended that the delay by the applicant to lodge her appeal has been inordinate and that the applicant has not shown diligence in pursuing her matter, instead she had been negligent for more than 180 days when she filed an application seeking for extension of time to file an application for leave to appeal in the court of appeal.

Challenging the application further the Respondent submitted that the application for extension of time by the applicant cannot be proved by a mere medical chit of which he argued it was forged due to the fact that the

Applicant claimed to have been compelled to be on bed rest for 7 days while on the 15th day of September 2021 she came to court and filed a notice of appeal. He questioned how it was possible for the applicant to file the said notice of appeal if she was supposed to be on bed rest.

In the circumstances, the Respondent argued that it was quite clear that the delay was caused by a serious and gross negligence on the part of the applicant since she was aware of the decision of the High Court of Moshi in Pc. Matrimonial Appeal no. 2 of 2021 as the same was delivered in presence of both parties. Therefore, he submitted that the argument by the applicant does not hold water. It is baseless to the extent that cannot warranty this honorable Court to grant extension of time to file an application for leave to appeal out of time. It was the Respondent's submission that the applicant has not brought sufficient proof and or explanation accounting for each day of delay between the date of determination of Pc. Matrimonial Appeal no, 2 of 2021 and the date when the present application was effectively lodged before this court.

Arguing further the respondent submitted that under the circumstances of the application at hand, even Section 3A and 3B of the Appellate Jurisdiction Act Cap 141 R.E 2019 which imported the principle of overriding objective does not apply.

Based on his submission, it was the Respondent's prayer that this application ought to be dismissed and costs be awarded to him.

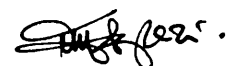
I have given due consideration to the submission by both parties. In considering the application for an extension of time, the applicant is always

expected to furnish the Court before which the application has been filed with sufficient cause for the delay. The applicant has brought this application under Rule 10, 45 and 46 of the **Tanzania Court of Appeal Rules** Cap 141 R.E 2019 (the Rules). Under rule 10 it is stated that;

*"The Court may, **upon good cause shown**, extend the time limited by these Rules or by any decision of the High Court or tribunal, for the doing of any act authorized 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".*
(Emphasis added)

The court referred in the provision above has the meaning described under rule 3 of the Rules which means the Court of Appeal of the United Republic of Tanzania. This means the cited Rule 10 is not the proper enabling provision in so far as this application is concerned. For purposes of this application, the applicant was required to make his application under section 11(1) of the Appellate Jurisdiction Act, Cap 141 R.E 2019 which reads;

"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"

Therefore, it is clear that the applicant has not properly moved this court by failing to cite the proper enabling provision. However, considering the need to achieve substantive justice as promulgated under **Section 3A (1) of the Civil Procedure Code, Cap 33 R.E 2019** and given the fact that this court does have jurisdiction to grant the order sought though not under the cited provision, the error has inconsequential and so I will proceed to determine the application on merit.

Before going into the merits of the application, I noted in the chamber summons the applicant has applied before this court to be granted extension of time to file leave to appeal to the Court of Appeal. Now considering the fact that this matter originates from primary court, I am afraid that the prayer sought by the applicant is inapplicable at this juncture. The law does not require the applicant in a case emanating from primary court to seek for leave to appeal to the court of appeal but to apply for a certificate on point of law. This position of the law is clearly provided under section **5(2) (c) of the Appellate Jurisdiction Act, CAP 141 R.E. 2019** which reads;

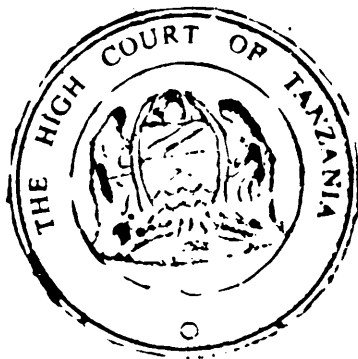
"No appeal shall lie against any decision or order of the High Court in any proceedings under Head (c) of Part III of the Magistrates' Courts Act unless the High Court certifies that a point of law is involved in the decision or order"

The proceedings under Head (c) of Part III of the Magistrates' Courts Act provides for appellate and revisional Jurisdiction of the High Court in relation

to matters originating in Primary Courts. This application is therefore incompetent because even if this court would grant extension of time to file leave to appeal to the court of appeal the same is not required by the law.

In light of the above, I find this application lacking in merits and consequently is dismissed with costs. It is so ordered.

Dated and delivered at Moshi this 23rd day of AUGUST, 2022




T.M. MWENEMPAZI
JUDGE

Ruling delivered in Court this 23rd day of August, 2022 in the presence of the applicant and the respondent. Both present in person.


T.M. MWENEMPAZI
JUDGE