

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB- REGISTRY OF DAR ES SALAAM

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 586 OF 2021

STANBIC BANK TANZANIA LIMITED APPLICANT

VERSUS

PAUL FRANCIS KILASARA RESPONDENT

(Arising from the judgment and decree of this Court (Hon. J.S. Mgetta, J)
dated 6th December, 2018 in Civil Appeal No. 202 of 2017)

RULING

21st and 29th April, 2022

KISANYA, J.:

Before me is an omnibus application preferred under section 11(1) of the Appellate Jurisdiction Act, Cap. 141, R.E. 2019 (the AJA) and section 95 of the Civil Procedure Code, Cap. 33, R.E. 2019 (the CPC). Three basis prayers being sought for are as follows:-

1. That this Honourable Court be pleased **to extend time for the Applicant to give the notice of intention to appeal** against the whole decision of the High Court of the United Republic of Tanzania, Dar es Salaam, Registry at Dar es Salaam (Hon. Justice J.S. Mgetta dated 6th December, 2018 in Civil Appeal No. 202 of 2017).
2. That this Honourable Court be pleased **to grant the Applicant an extension of time for making an application for leave to appeal** against the whole decision of the High Court of the United

Republic of Tanzania, Dar es Salaam, Registry at Dar es Salaam (Hon. Justice J.S. Mgetta dated 6th December, 2018 in Civil Appeal No. 202 of 2017.

3. *That this Honourable Court be pleased **to grant the Applicant an extension of time for submitting a letter requesting this Honourable Court for certified copies of the proceedings, judgment and decree in appeal and other relevant documents for purposes of appealing** against the whole decision of the High Court of the United Republic of Tanzania, Dar es Salaam, Registry at Dar es Salaam (Hon. Justice J.S. Mgetta dated 6th December, 2018 in Civil Appeal No. 202 of 2017. (Emphasize supplied)*

The application is supported by the affidavit of Lilian Gawile who is the legal adviser, Dispute Resolution in the Legal Department of the applicant.

Upon being served, the respondent, Paul Francis Kilasara filed a counter-affidavit, to contest the application.

Briefly, the applicant was the respondent in Civil Case No 72 of 2016 which was decided in favour of the respondent on 26th July, 2017. Dissatisfied, the applicant appealed before this Court in Civil Appeal No. 202 of 2017. The said appeal was dismissed on 6th December, 2018. Determined to pursue the second appeal, the applicant lodged a notice of appeal on 18th

December, 2018. She also successfully applied for leave to appeal to the Court of Appeal. The leave was granted by this Court on 12th March 2019 in Misc. Civil Application No. 815 of 2018.

It turned out that the applicant failed to lodge the appeal within 60 days from the date of impugned decision. Therefore, the respondent applied before the Court of Appeal in Civil Application No. 80/01 of 2019 seeking an order for striking out the Notice of Appeal on two grounds namely, failure to take essential step of instituting the appeal within sixty days from the date of the impugned decision; and failure to serve the respondent with a copy of the letter requesting for a copy of the proceedings for appeal purposes. In its ruling which was delivered on 12th October, 2021, the Court of Appeal allowed the application. Thus, the applicant's notice of appeal was struck out. It is that decision which culminated to this application lodged on 15th November, 2021.

Having heard the parties' counsel on merit of this matter, I found it apposite to recall and require them to address me on whether the omnibus application was proper before this Court. While the applicant was represented by Mr. Makarios J. Tairo, learned advocate, the respondent

was advocated by Mr. Thomas Rwebangira and Mr. George Ngemela, learned advocate.

Submitting on the issue raised by the Court, Mr. Tairo argued that the application was properly filed before this Court. He argued that this Court has jurisdiction to determine all prayers. With regard to the third prayer, the learned counsel contended this Court has jurisdiction to determine the same because there is no notice of appeal against the decision of this Court in Civil Appeal No. 202 of 2018 which is pending in the Court of Appeal. In buttressing his submission, he cited the cases of **Mohamed Enterprises vs Chief Harbour Master and Another**, Civil Appeal No. 24 of 2015 (unreported) and **MS Law Associates vs IPTL** [2004] TLR 276.

Mr. Tairo further contended that section 95 of the CPC cited in the chamber summons is an enabling provision because there is no specific law which provides for extension of time to submit a letter requesting for documents required for appeal to the Court of Appeal. Reliance was based on the case of **Bunda District Council vs Verian Tanzania Ltd** [2000] TLR 385.

The applicant's counsel further submitted on the status of the omnibus application is to the effect that such application is not barred by the law. He urged this court to consider the cases of **MIC Tanzania Ltd vs Minister for Labour and Youth Development and Another**, Civil Appeal No. 103 of 2004, and **Rutanginga C.L vs The Advocates Committee and Another**, Civil Application No. 98 of 2010 in which the Court of Appeal underlined the reasons of encouraging omnibus application.

It was further submitted that the circumstances of this case permits combination of three prayers or applications because they are related to extension of time. However, the applicant's counsel admitted that there are cases where omnibus application is not allowed. For instance, he cited **the case of Ali Chamani vs Karagwe District Council and Another, Civil Application No. 441/04 of 2017** in which omnibus application was refused because the Court of Appeal had no jurisdiction to determine an application for leave to appeal.

On that stand, Mr. Tairo urged me to consider that this omnibus application was properly filed and that it is not practicable to separate the three prayers.

Responding, Mr. Rwebangira conceded that this Court has jurisdiction to determine the 1st and 2nd prayers. However, he argued that the Court has no jurisdiction to hear and determine the third prayer. He contended that the time within which to apply for documents required for purposes of appeal is provided for under section 90(1) and (3) of the Court of Appeal Rules, R.E. 2019 (henceforth "the CAT Rules"). In that regard, he argued that the applicable provision is rule 10 of the Rules and not the CPC.

Mr. Rwebangira agreed with the counsel for the applicant that this Court ceases to have jurisdiction once a notice of appeal is filed in the Court of Appeal. However, he urged me to consider that this omnibus application is prohibited on the reasons that, the prayers are heard by two separate courts; the applicable law on the third prayer is different from the law applicable on the first and second prayers; and the application for leave to appeal is filed after lodging the notice of appeal. He cemented his submission by citing the cases of **Juliana Armstrong Jerry vs International Commercial Bank and 2 Others**, Misc. Land Application No. 30 of 2020, **Mrs Lily Marandu t/a Lily Enterprises vs Arusha International Conference Center**, Civil Application No. 34 of 2015, **CRDB Bank Plc vs Finn W. Peterson and 3 Others**, Civil Application No. 367/17 of 2017,

Juma Nkondo vs TOL Gases Limited, Civil Appeal No. 382/01 of 2019
(all unreported).

For the foresaid reasons, Mr. Rwebangira urged the Court to strike out the application. He also asked the Court to make an order as to costs on the reason that the applicant had not conceded to the propriety of this application and that the respondent's counsels were inclined to conduct a research.

When Mr. Tairo rose to rejoin, he reiterated his submission that there is no specific law which governs the third prayer and that rule 90(1) and (3) of the CAT Rules does not apply in the case at hand. He went on to contend that the time set out under rule 90(1) of the Rules starts to run from the date of decision of the High Court. He submitted further that rule 10 of Rules is applicable when the matter is before the Court of Appeal.

Mr. Tairo submitted that there was no need of filing three application because this Court has jurisdiction to determine the matter and criteria for determining all prayers are the same. Commenting on the cases cited by the respondent's counsel, Mr. Tairo argued that they are distinguishable from the circumstances of this case. Although the learned counsel admitted that

the prayers sought for are made under two separate laws, he contended that this Court has jurisdiction to determine the same.

In conclusion, the learned counsel urged me to consider the application on merit. As to the issue of costs, he referred the court to the settled law, an order as to costs cannot be awarded when the case is determined based on the issue raised by the Court.

Having considered the contending submission of both sides, I have observed that parties are in agreement that this is an omnibus application. It entails three distinct applications which are preferred in one application. The issue for determination is whether the omnibus application was properly filed or whether this omnibus application is allowed.

In view of the authorities cited by the counsels for both parties, it is settled position that the law does not bar combination of more than one prayer in one application. Although such practice is encouraged, the issue whether such application is competent or otherwise is decided basing on the circumstances of each case. See the case of **MIC Tanzania Limited** (supra) relied upon by the applicant's counsel. In that case, the Court of Appeal held *inter-alia*, that:-

"unless there is a specific law barring the combination of more than one prayer in one chamber summons, the court should encourage this procedure rather than thwart it for fanciful reasons. We wish to emphasise, all the same that, each case must be decided on the basis of its own peculiar facts"

Another principle is to the effect that case law has set out conditions where more than one applications qualify to be lumped in one application. One of the said condition states that the said application or prayers must not opposed to each other or made under different laws. See also the case **Rutunda Masole vs Makufuli Motors Limited**, Misc. Labour Application No. 79 of 2019, HCT at Mwanza (unreported) where it was held that:

"The condition precedent for applicability, of this rule is that the application should not be diametrically opposed to each other or preferred under different laws, complete with different timelines and distinct considerations in their determination"

In another case of **Ali Chamani vs Karagwe District Council and Columbus Paul**, (supra), the applicant moved the Court of Appeal seeking the orders for extension of time for giving notice of appeal against the High Court decision; extension of time to file an application for leave to appeal to

the Court of Appeal against the decision of the High Court; and leave to appeal to the Court of Appeal. In determining the competency of that application, the Court of Appeal held that:-

*"In the matter under consideration, none of the provisions which were invoked by the applicant talk of applications, I think, in view of the above position of the law the applicant **ought to file separate applications instead of lumping all of them in one application as he did because it amounts to omnibus application.**"*

Guided by the above position, it is common ground that the applications for extension to give the notice of intention to appeal and extension of time within which to apply for leave to appeal against the decision of the High Court are made under section 11 (1) of the AJA. It is also not disputed that the application or prayer for extension of time to submit a letter requesting for certified copies of the proceedings, judgment and decree in appeal is not made under section 11(1) of AJA. While, Mr. Tairo is of the view that this Court has mandate to determine the third prayer under section 95 of the CPC, Mr. Rwebangira maintains the position that section 95 of the CPC is not applicable. The latter argued that the applicable

provision is rule 10 of the CAT Rules and that the mandate to determine the third application is with the Court of Appeal.

I am in agreement with Mr. Rwebangira. The CPC does not set time within which the party to the case must apply for copies of proceedings, judgment and decree for purposes of appeal to the Court of Appeal. It is Rule 90 (1) and (3) of the CAT Rules which set the time to submit the said letter within 30 days of the date of impugned decision of the High Court. The said rule provides:

"90.-(1) Subject to the provisions of Rule 128, an appeal shall be instituted by lodging in the appropriate registry, within sixty days of the date when the notice of appeal was lodged with –

- (a) a memorandum of appeal in quintuplicate;*
- (b) the record of appeal in quintuplicate;*
- (c) security for the costs of the appeal,*

save that where an application for a copy of the proceedings in the High Court has been made within thirty days of the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted be excluded such time as may be certified by the Registrar of the High Court as having

been required for the preparation and delivery of that copy to the appellant.

Therefore, much as the time to apply for a copy of proceedings, judgment and decree for purposes of appeal is provided for under the CAT Rules, I agree with Mr. Rwebangira that the section 95 of the CPC is not applicable. I also agree with him that the relevant provision is rule 10 of the CAT Rules quoted hereunder:

*"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"*

It is apparent from the above provision that, the mandate to extend time set out by the CAT Rules is vested in the Court of Appeal. That being the case, extension of time within which to submit a letter requesting for certified copies of the proceedings, judgment and decree is at the exclusive domain of the Court of Appeal.

In view thereof, I hold that this omnibus application is incompetent for combining applications which ought to have been filed in different courts. I, accordingly, proceed to strike out the application.

As to the costs of this application, I agree with Mr. Tairo that the timebound principle is to the effect that costs are not awarded if a matter is disposed of basing on issue raised by the Court, *suo mottu*. That being the position, each party is ordered to bear its own costs.

DATED at DAR ES SALAAM this 29th day of April, 2022.



S.E. Kisanya
JUDGE