

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

MWANZA SUB-REGISTRY

AT MWANZA

MISCELLANEOUS CIVIL APPLICATION NO. 14 OF 2022

(Arising from High Court Civil Revision No. 08/2020)

ISAKA MAGALATA APPLICANT

VERSUS

CHARLES LUKAGO MASABA RESPONDENT

RULING

11th & 20th May, 2022.

KAHYOZA. J.:

Isaka Magalata instituted the present application seeking this Court to certify that there exists a point of law to be considered by the Court of Appeal. Before hearing the application, I entertained doubts if the application was instituted within the prescribed time. I summoned parties to address the Court whether the application was filed within time.

The applicant and his advocate Mr. Kabago appeared while the respondent did not appear duly informed. The matter proceeded in his absent. The applicant's advocate submitted that his client filed the application within time. He argued that the application was well within time

as the Court delivered the Ruling sought to be impugned on 31st January, 2022 and the application was filed electronically on 2nd March, 2022. He added that since the month of February, 2022 had 28 days, the applicant filed the application on the 30th day. Mr Kabago urged further that the law provides that date of filing is considered as the date of filing an application on line that is on 2.3.2022.

It is evident from the record that this Court (Manyanda, J.) delivered the Ruling, which the applicant seeks to challenge on 31st January, 2022 and he lodged the application seeking a certificate that the case is a fit case for appeal on the 2.3.2022. The applicant paid filing fees on 8.3.2022. The disquieting question is when is the filing date? Is it the time an application is filed electronically as provided by rule 21 of the Judicature and Application Laws Act (**Electronic Filing**) Rules, 2018 GN. No. 148 of 2018 or the date filing fees are paid? I decide not to answer the question because it is not relevant to determine the issue raised *suo mottu*. Time will come in future when this Court will determine the disquieting question.

The question this Court must answer is whether the applicant instituted the application for certifying that there is point of law to be considered by the Court of Appeal within the prescribed time. I wish to

state at outset that the issue was raised under wrong assumption that the applicant was required to file the application within thirty days. Rule 44 of the Tanzania Court of Appeal Rules, GN. No 380/2009 prescribes time within which to file an application for leave to appeal. It does not prescribe time within which to file an application for certificate on point of law. It is trite law that an application for which no specific time for instituting the same is provided by the Rules or any other law, should be filed or lodged within sixty days from the date of the decision. See the **Suleiman Ally Nyamalegi and 2 Others vs. Mwanza Engineering Works Ltd**, MWZ Civil Application No.9 of 2002 (CAT unreported), at page 7 to 9 of the typed ruling, stated:-

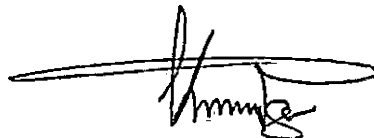
"So it is clear therefore that when there is no specific time scale imposed in any application the sixty days should come in aid to fill the lacuna. The application before Mandia, J.A ought to have been lodged within sixty days from the decision of the High Court. Because the applicant was late to do so for whatever reasons/ she ought to have first applied for extension of time. It is proper that she should tell the court why she delayed in making the application".

In the present case, since no time is prescribed for filing an application for a certificate that there exists a point of law, such an

application ought to be filed within sixty days from the date of the decision. Consequently, I find that **Isaka Magalata** filed the application well within time.

The application shall be heard on merit.

Dated this 20th day of May, 2022

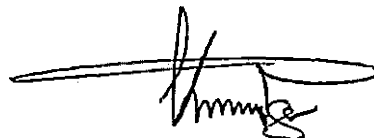


J. R. Kahyoza,

Judge

20/05/2022

Court: Ruling delivered in the presence of the applicant and in the absence of the respondents. B/C Ms. Jackline (RMA) present.



J. R. Kahyoza

JUDGE

20/05/2022

