

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISC.CIVIL APPLICATION NO. 197 OF 2022**

*(Arising from the decision of High Court in Civil Appeal No. 70 of 2016)*

**RAJABU JOHN MWIMI ..... APPLICANT**

**VERSUS**

**MANTRACT TANZANIA LTD .....RESPONDENT**

**RULING**

**S.M. MAGHIMBI, J:**

By way of chamber summons supported by an affidavit, the applicant has lodged this application under the provisions of Section 11(1) of the Appellate Jurisdiction Act Cap 141, R. E 2019. He is moving his court to grant orders for extension of time to lodge an appeal to the Court of Appeal against the decision of this court in Civil appeal No. 70 of 2016 dated 10<sup>th</sup> October, 2017.

The application was disposed by way of written submission. Before this court, the Applicant appeared in person and unrepresented while the respondent was represented by Mr. Karoli Valerian Tarimo, learned Advocate.

I have considered the submissions of the parties which will be taken onboard in due course of constructing this ruling. As per the records of

this application, the Applicant was the appellant in Civil Appeal No. 70 of 2016 which was decided in favour of the respondent herein. Aggrieved by the decision, he filed an application for extension of time seeking leave to appeal to the Court of Appeal the prayer which was granted. The ruling was delivered on 03<sup>rd</sup> September, 2019 and the applicant was granted 14 days, from the date of ruling, within which he should lodge his application for leave to appeal. He again delayed in filing the application for leave and has again approached this court in this application, praying for the same orders for extension of time which were granted by this same court.

It is the applicant's contention that the order for extension of time to file an application for leave to appeal to the Court of appeal was granted on 03<sup>rd</sup> September, 2019 and that upon delivery of that ruling, the copy of the ruling was not supplied to the Applicant in time. He further stated that the copy of ruling was supplied to him on 16<sup>th</sup> September, 2019. He further submitted that he did lodge the application for leave on 16<sup>th</sup> September, 2019, but the Registry office had endorsed the same on 18<sup>th</sup> September 2019 which was two days later.

In reply, Mr. Tarimo submitted that the previous application for leave having been dismissed for being time barred, it is not open for the applicant to come again to the same court and seek for extension of

time to file another application for leave while he has already filed application for leave and it was dismissed by this court on jurisdictional ground of time limitation. He stated that the remedy available is to appeal against the order of this court dismissing the application for leave. Mr. Tarimo submitted further that there was no need to attach a copy of the said ruling to the application for leave.

In his rejoinder, the applicant submitted that the application was not determined on merit and that it was difficult to appeal against the order of this court.

Having heard those submissions, the main issue before me is to first determine whether this application is tenable. As per the records of this application, it is true that the applicant had already filed in this court the application for extension of time to apply for leave to appeal to Court of appeal on which he was granted the extension of time by Hon. Ngwala J, an order dated 3<sup>rd</sup> September, 2019. I have also noted that the Applicant eventually filed an application for leave to appeal to the Court of Appeal through Misc. Civil Application No. 493 of 2019 which was dismissed before Hon. De- Mello J, for being time barred. That being the case, as argued by the respondent, since the application was dismissed for being time barred, the applicant is barred from filing yet another application for extension of time and a subsequent application application for leave to

appeal to the Court of Appeal because all those matters have already been determined by this court. In the case of **Cyprian Mamboleo Hizza v Eva Kioso & Another**, In Civil Application No. 3 of 2010, CAT at Tanga Msoffe, J.A (as he then was) while citing the case of **Ngoni-Matengo Cooperative Marketing Union Ltd. V. Ali Mohamed Osman (1959) EA577** where the court had this to say:

*"..... This court, accordingly, had no jurisdiction to entertain it, what was before the court being abortive, and not a properly constituted appeal at all. What this court ought strictly to have done in each case was to "strike out" the appeal as being incompetent, rather than to have "dismissed" it: **for the latter phrase implies that a competent appeal has been disposed of, while the former phrase implies there was no proper appeal capable of being disposed of.**"*

His Lordship Msoffe, J.A (as he then was) added further that,

*"Presumably, if the application had not been dismissed the applicant could have gone back to the High Court and start the process afresh. Since the application was dismissed instead of being struck out, he came to this Court vide Civil Application No.4 of 2009 by way of a "second bite", so to speak."*

From the above authorities, it implies that a competent application for leave has already been disposed by this court hence it was not proper for the applicant to come at the same court and file the same application which was dismissed. In the case of **Tanzania Breweries Limited Vs.**

**Edson Muganyizi Barongo & 7 Others, Misc. Labour Application**

**No. 79/2014** (unreported), the High Court-Labour Division held that:

*"when a suit/application is dismissed for being time barred, the only remedy available is to appeal rather than applying for extension of time in the same court"*

As for the application at hand, the situation is the same as the same application for extension of time was already granted and the intended application for leave had already been dismissed making it res judicata of the Misc. Civil Application No. 493 of 2019 which dismissed an application for leave to appeal to the Court of Appeal. Consequently, this application is hereby dismissed without costs.

Dated at Dar es Salaam this 13<sup>th</sup> day of March, 2023

  
  
**S.M. MAGHIMBI**  
**JUDGE**