

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(TANGA DISTRICT REGISTRY)
AT TANGA**

MISCELLANEOUS CIVIL APPLICATION NO. 20 OF 2023
(Arising from Civil Application No. 40 of 2020 from Misc. Application No. 69 of 2017,
Original Civil Case No. 3 of 2016 of the High Court of Tanzania at Tanga)

SANJIV SHASHIKANT LALAPPLICANT

VERSUS

HAMED SEIF HAMDUNI RESPONDENT

RULING

25th September, 2023 & 29th September, 2023

MANYANDA, J.

This is a ruling in respect of an application for extension of time to file an application for leave to appeal to the Court of Appeal of Tanzania lodged by Sanjiv Shashikant Lal against one Hamed Seif Hamduni, it is made under Section 11(1) of the Appellate Jurisdiction Act, [Cap. 141 R. E. 2019].

The application is made by way of a chamber summons supported by an Affidavit affirmed by Mr. Shukuru M. Khalifa,



the Applicant's Advocate and countered by a Counter Affidavit sworn by Mr. Mafuru Mafuru, the Advocate of the Respondent.

Before I proceed to determine the application let me narrate, in brief, the facts of this case.

The Applicant had previously filed an appeal to the Court of Appeal of Tanzania registered as Civil Appeal No. 438 of 2022 after having timely filed notice of appeal and applied for copies of records and served the respondent with all copies of necessary proceedings and order essential in filing the appeal.

Unfortunately, the appeal was struck out by the Court of Appeal of Tanzania for the reasons that leave was not in the record of appeal, hence, the Applicant needed to start afresh the whole process of appeal. He could do so after applying and obtaining extension of time to apply for the necessary documents namely, notice of appeal, and leave to appeal to the Court of Appeal.

When the application was called for hearing the applicant was represented by Mr. Shukuru Khalifa, learned

Advocate and the Respondent was represented by Mr. Mafuru Mafuru, learned Advocate.

By leave of this Court, the application was argued by written submissions and parties adhered to the schedule. I shall not reproduce the submissions by the Counsel, but I will be referring to them in the course of evaluating this ruling.

The main issue is whether leave is grantable in this application.

Legally, condition for grant of leave is provided for under Rule 46 (1) of the Court of Rules 2009, which reads:

"Where an application for a certificate or for leave is necessary, it shall be made after the notice of appeal is lodged."

As seen from Rule 46(1), for leave to be granted there must be a notice of appeal duly filed and registered in the Court of Appeal Registry.

Therefore, it is a mandatory requirement that there must be a Notice of Appeal before leave is granted. I have inspected this application and found that there is no notice of



appeal which was filed, as it has been submitted by the respondent that the ruling in Civil Application No. 40 of 2020, dated on 4th October, 2021, upon which a notice of appeal was lodged was struck out by the Court of Appeal, which means the Notice also died with it, means that there is no existing Notice in the Court of Appeal.

That further means this application for leave is not backed by any notice of appeal; an act which violated Rule 46(1) of the Court of Appeal of Tanzania.

As expressly provided in the case of **Robert Kadaso Mageni vs Republic** (Criminal Appeal No. 476 of 2023) [2023] TZCA 17504 that,

"Courts should not grant applications for extension of time for lodging matters that are expressly barred by statute. It is an exercise in futility for instance to grant extension of time to lodge an appeal where the applicant has no right of appeal."

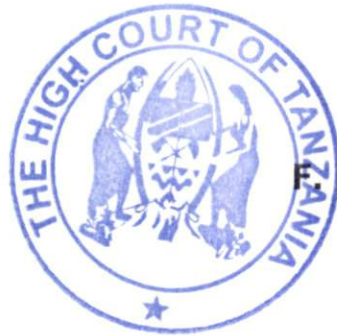
In the circumstances I find that this application for extension of time to file an application for leave to appeal to

the Court of Appeal of Tanzania lacks merits because even if the time is extended, yet the application for leave will meet a huddle for want of notice of appeal, it is untenable.

For the reasons stated above I do hereby strike out this application for want of a notice of appeal with costs.

It is so ordered.

Dated at Tanga this 29th day of September, 2023




F.K. MANYANDA
JUDGE