

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. 574 OF 2022

PHOENIX OF TANZANIA INSURANCE CO. LTD APPLICANT

VERSUS

SELEMANI SALIM SHEKIDELE RESPONDENT

(Arising from the decision of the High in Civil Case No. 311 of 2021)

RULING

6th September, 2023

KISANYA, J.:

The applicant, Phoenix Tanzania Insurance Company Limited has moved this Court seeking the following orders:

- 1. That, this Honourable Court may be pleased to grant extension of time to file, serve notice of appeal and apply for copies of judgment, decree and proceedings against decision of the High Court of Tanzania (Dar es Salaam District Registry) Civil Appeal No. 311 of 2021 by Hon. Ismail, J, delivered on 9th August, 2022.*
- 2. Costs of this application be provided for.*
- 3. Any other relief that this Honourable Court may deem fit to grant.*

The application is made under section 11 (1) of the Appellate Jurisdiction Act, Cap. 141, R.E. 2022 (the AJA). It is supported by an affidavit sworn by Angela Kesya Mturi, who is the applicant's Claims Manager. The application is

opposed by an affidavit sworn by Ambrose Malamsha, learned advocate for the respondent.

At the hearing of this matter, both parties were legally represented. The applicant enjoyed the services of Ms. Salha Mlilima learned counsel, while the respondent had the service of Mr. Ambrose Malamsha, also learned counsel. With leave of the Court, the application was disposed of by way of written submissions.

Before issuing a schedule within which parties were to file their written submissions, I wanted to satisfy myself on whether the provisions cited in the chamber summons empowers this Court to extend the time within which the applicant may serve the notice of appeal and apply for the copies of judgment, decree and proceedings; and if the answer is the negative, whether this omnibus application is competent before this Court. Therefore, the learned counsel for the parties were directed to address that issue in their respective written submissions.

It is my considered view that, the issue raised by the Court, *suo motto*, goes to the root of the matter. I thus, find it appropriate to determine if first.

In her submission in chief, Ms. Mlilima submitted that the application is preferred under section 11 (1) of the AJA. She conceded that the said provision does provide for extension of time within which to apply for the copies of judgment, decree and proceedings. She contended that the enabling provision

is section 14 (1) of the Law of limitation Act [Cap. 89 R. E. 2019] (the LLA), which was mistakenly not cited in the chamber summons. Therefore, the learned counsel asked this Court to invoke the oxygen principle enshrined under section 3A of the AJA and consider that the enabling provision for extension of time to apply for the copies of judgment, decree and proceedings is section 14 (1) of the LLA.

On the adversary part, Mr. Malamsha submitted that section 11(1) of the AJA is limited to extension of time within which to give notice of appeal; extension of time to apply for leave to appeal; and extension of time within which to apply for a certificate on point of law. He was firm that the said provision does not cover extension of time within which to apply for the copies of judgment, decree and proceedings. It was his further submission the principle of overriding objective cannot be invoked by determining the matter under section 14 (1) of the LLA. His argument was based on the ground that, under rule 10 of the Court of Appeal Rules, 2009 (as amended) (henceforth "the Rules), the mandate to extend time for requesting the copies of proceedings, judgement and decree is vested in the Court of Appeal.

In her rejoinder, Ms Mlilima submitted that section 14(1) of the LLA and 11(1) of the AJA empower this Court to entertain the matter. She submitted that an application for a copy of the proceedings is part of the institution of an appeal under rule 90 (1) of the Rules. It was her further contention that, the respondent's argument that the application ought to have been lodged in the

Court of Appeal is misconceived. She cited the case of **Prof. Esther Mwaikambo vs Ernest Nyemo Mpilinga**, Misc. Land Application No. 560 of 2018 in which this Court determined an application of this nature. She reiterated her prayer that the application be determined under section 14(1) of the Law of Limitation Act.

I have considered the rival submissions from the learned counsel for both parties. It is on record that this omnibus application involves two or three applications namely, application for extension of time to file and serve the notice of appeal and application for extension of time to apply for the copies of the judgment, decree and proceedings.

In that regard, first for consideration is whether the provision cited in the chamber summons enables this Court to entertain the said prayers. At the outset, I am alive to the settled law that, the law does not bar combination of more than one prayer in one application. However, the issue whether application of this nature is competent or not is determined based on the peculiar facts of each case. I am supported by the case of case of **MIC Tanzania Ltd vs Minister for Labour and Youth Development and Another**, Civil Appeal No. 103 of 2004 (unreported), wherein the Court of Appeal underlined 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 emphasize, all the same***

that, each case must be decided on the basis of its own peculiar facts" (emphasize is supplied)

The law is further settled that, for more than one applications to be merged in one application, prayers must not be opposed to each other or determined under different laws. This stance was taken in the case of **Rutunda Masole vs Makufuli Motors Limited**, Misc. Labour Application No. 79 of 2019, HCT at Mwanza (unreported) in which this Court underlined 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"

It is also imperative to restate the time bound principle that, non-citation or wrong citation of the enabling provisions of the law renders the application incompetent. This position has been stated in a plethora of authorities such as **Hussein Mgonja vs. The Trustees of the Tanzania Episcopal Conference**, Civil Revision No. 2 of 2002 (AR), **Aloyce Mselle vs The N.B.C. Consolidated Holding Corporation**, Civil Application No. 11 of 2002 and **Robert Leskar vs. Shibesh Abebe**, Civil Application No. 4 of 2006, (all unreported). However, with the introduction of the principle of overriding objective, the court is enjoined to may entertain such application upon being satisfied that it has jurisdiction or mandate to determine the same.

Reverting to this application, it is not disputed that the prayer for extension of time to file and serve the notice of appeal and that of extension of time to apply for copies of judgment are both made under section 11(1) of the AJA. The said provision provides as follows:

"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."

My understanding of the above cited provision is that, it empowers the High Court or the subordinate court exercising extended powers to extend the time for giving notice of intention to appeal, filing an application for leave to appeal or for certificate that there is a point of law in the intended appeal to the Court of Appeal. It does not give this Court mandate to extend time within which to serve the notice of appeal or apply for the copies of the proceedings, judgment and decree.

Besides, Ms. Mlilima invited me to invoke the principle of overriding objective and entertain the matter under section 14(1) of the LLA. The law is settled in our jurisdiction that, the said principle cannot be applied blindly against the mandatory provisions of the procedural law which go to the

foundation of the case. See the cases of **Mondorosi Village Council and 2 Others v. Tanzania Breweries Limited and 4 Others**, Civil Appeal No. 66 of 2017 and **Martin D. Kumaliya and 117 Others v. Iron and Steel Ltd, Civil Application** No. 70/18 of 2018 (both unreported). In **Kumaliya's** case (*supra*), the Court of Appeal held that:

"To give effect to the overriding objective of facilitating the just, expeditious, proportionate and affordable resolution of disputes. While this principle is a vehicle for attainment of substantive justices, it will not help a party to circumvent the mandatory rules of the Court."

As stated afore, the principle of overriding objective may be invoked if this Court has mandate to entertain the prayers stated in the chamber summons. Reading from section 14(2) of the LLA, it is clear that the power to extend the time is vested in the court having jurisdiction to entertain the appeal or application, as the case may be. Thus, section 14 (1) of the LLA cannot be invoked if the court has no jurisdiction to entertain the appeal or application.

Further to the foregoing, the time for serving the notice of appeal or for applying for copies of the proceedings is specified by rules 84(1) and 90(1) and (5) of the Rules, respectively. There is no other law which prescribes the time limitation for service of the notice of appeal and application for the copies of proceedings. That being the case, the applicable provision is rule 10 of the Rules. It reads:

"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."

From the above wording of rule 10 of the Rules, it is clear that, the Court of Appeal is vested with powers to extend time limited by the said Rules, for doing any act authorized by the said Rules. Since the time for serving the notice of appeal and applying for the copies is limited by the Rules, I find that this Court is not seized with the jurisdiction to entertain the prayer for extension of time to serve the notice of appeal and extension of time for applying for the proceedings, judgment and decree.

If I may add, section 14(1) of the LLA relied upon by Ms. Mlilima cannot be employed because the LLA does not apply to the appeals to the Court of Appeal. I have also read the case of **Prof. Esther Mwaikambo** (*supra*) referred to this Court by the applicant's counsel. In that case, this Court did not deal with the issue whether the application for extension of time to apply for the copies of proceedings, judgment and decree was competent before it. On that account, the said case is distinguishable from the issue under consideration. Akin to the issue at hand is the case of **Stanbic Bank Tanzania**

Limited vs Paul Francis Kilasara, Misc. Civil Application No. 586 of 2021
(unreported), in which this Court stated:-

"...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."

I subscribe to the above stated position. And guided by the principles stated hereinabove, I am of the considered view that, this application is incompetent for combining applications or prayers which are required to be predicated under and determined by different laws and courts. Considering further that this Court has no mandate to entertain some of the applications or reliefs sought by the applicant, I am constrained to find this application is incompetent before this Court.

In conclusion, I hereby strike out this application for the reasons stated herein. Given that the matter is disposed of based on the issue raised by the Court, I make no order as to costs.

DATED at **DAR ES SALAAM** this 6th day of October, 2023.



S. E. KISANYA
JUDGE