

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

**DAR ES SALAAM SUB-REGISTRY**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 26821 OF 2023**

**BETWEEN**

**AC TECHNOLOGY LIMITED ..... APPLICANT**

**VERSUS**

**PM GROUP.....RESPONDENT**

**RULING**

*Date of last order: 19/04/2024.*

*Date of Ruling: 31/05/2024.*

**A.A. MBAGWA, J.**

This is an application for an extension of time within which to serve the respondent with a notice of appeal and a letter for request of judgment, decree, and proceedings. The applicant has moved the court by way of chamber summons along with an affidavit seeking the following orders;

1. This honorable court be pleased to grant the applicant an extension of time within which to serve the respondent with a notice of appeal



and letter written by the applicant for supply of requisite documents for appeal purposes.

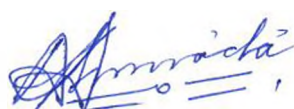
2. Costs of application be provided for.

The court has been moved under sections 11(1) and (2) of the Appellate Jurisdiction Act, Rules 4, 10, 47, 49, and 55 of the Court of Appeal Rules, and sections 93 and 95, and Order XXXVII Rule 2 of the Civil Procedure Code. On the one side, the application was supported by an affidavit sworn by Danford Nyambuya Maganjila, the applicant's Managing Director. On the other side, it was contested by the respondent via an affidavit by Nickson Ludovick, the respondent's Company Secretary.

The applicant was represented by Mr. Kassim Nyangarika, learned counsel whilst the respondent had the services of Mr. Nickson Ludovick, learned counsel as well.

When the matter was called on for hearing, at the instance of the learned counsel, the Court ordered the matter to be disposed of by way of written submissions. I commend both counsel for their enriching submissions.

While responding to the applicant's submission, the respondent's counsel raised issues of jurisdiction. He opined that this court is not enjoined with the requisite jurisdiction to entertain the matter. While citing the case of



**Henry Jlison Mwamlima vs Robert Jalison Mwamlima & another**  
**Civil Application No. 652 of 2022 TCA at Mbeya**, the learned respondent's counsel submitted that the court cannot assume the powers which it has not been given by the law. He clarified that the provisions cited in chamber summons confer powers to the Court of Appeal and not this court. He thus invited the Court to strike out the application for want of jurisdiction.

In contrast, Mr. Nyangarika vehemently opposed the respondent's counsel. He submitted that pursuant to section 11 of the Appellate Jurisdiction Act and Rule 47 of the Court of Appeal Rules, both the Court of Appeal and this Court enjoy concurrent jurisdictions over the matter as such, there was no harm for this court to entertain the application at hand. The learned applicant's counsel beseeched this court to ignore the jurisdictional issue raised by the respondent's counsel and proceed to grant the application as prayed.

It is a settled law that issues of jurisdiction can be raised at any stage of proceedings including the appellate level. See the case of **R.S.A. Limited vs Hanspaul Automechs Limited and Another**, Civil Appeal No. 179 of 2016, CAT at Dar es Salaam. On page 12 of the judgment, it was held;



*'Thus, since the jurisdiction to adjudicate any matter is a creature of statute, an objection in that regard is a point of law and it can be raised at any stage.*

*In our considered opinion, it was not offensive on the part of the respondents to raise it in the final submissions which was after the close of the hearing'.*

It is from the above authority that I was compelled to take into account and determine the respondent's complaint on jurisdiction.

Having canvassed the rival submissions and upon scanning the provisions cited by the applicant in the chamber summons, I am at one with the respondent's counsel that this court is not vested with powers to grant the reliefs sought. Section 11 of the Appellate Jurisdiction Act confers jurisdiction to this Court in respect of applications for lodging a notice of intention to appeal, leave to appeal, and certificate on point of law. Equally, I took the trouble to read the provisions of Rules, 45A, 46, and 47 of the Court of Appeal Rules and found that the same confers concurrent jurisdictions to this Court and the Court of Appeal to extend the time of lodging a notice of appeal, applying for leave to appeal, and applying for a certificate on a point of law. Extension of time for serving the respondent with the notice of appeal or a request letter to be supplied with copies of judgment, decree, and



proceedings is not among the remedies that this Court is empowered to grant.

Indeed, the applicant's counsel could not refer this court to any specific provisions that empower this court to extend the time for service of the notice of appeal and a request letter for copies of judgment, decree, and proceedings nor was he able to refer the Court to any authority to that effect.

I had an occasion to read the case of **Mathias Charles Kaselele vs Registered Trustees of The Archdiocese of Mwanza Roman Catholic**

Civil Application 6/08 of 2016, CAT at Mwanza which was cited by the applicant's counsel. Unfortunately, I found this case to be distinguishable from the matter at hand because it was all about the extension of time for lodging a notice of appeal and leave to appeal. On page 8 of the ruling, the Court of Appeal held;

*'As already indicated, the applicant lodged the existing application after the High Court had dismissed his application for **the extension of time to file notice of appeal and apply for leave to appeal** (i.e., Miscellaneous Land Application No. 71 of 2015) on 5th May 2016. It is my firm view that whether the dismissal was justified or not, the proper course for the applicant was what he did, that is, moving this Court under Rule 10 of the Rules for the*



*same reliefs. Accordingly, the second and only remaining point of preliminary objection is devoid of merit. It stands dismissed.'*

The above holding tells it all that the cited case did not concern the extension of time for service of a notice of appeal.

From the foregoing, I am constrained to agree with the respondent's counsel that this court is not clothed with powers to entertain this application for an extension of time within which to serve the respondent with a notice of appeal and request letter for copies of judgment, decree, and proceedings. That said and done, I strike out the application with costs.

It is so ordered.

The right of appeal is explained.



  
**A.A. Mbagwa**

**JUDGE**

**31/05/2024**