

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

**TEMEKE SUB-REGISTRY**

**(ONE-STOP JUDICIAL CENTRE)**

**AT TEMEKE**

**MISC. CIVIL APPLICATION No. 42 OF 2023**

*(Originating from PC Civil Appeal No. 53 of 2022 of the High Court at Temeke One-Stop  
Judicial Centre)*

**HAMZA KONDO MTUNGILA.....APPLICANT**

**VERSUS**

**REHEMA MUSSA MSAKI.....RESPONDENT**

**RULING**

*22<sup>nd</sup> December, 2023 & 17<sup>th</sup> January, 2024*

**BARTHY, J.:**

In the matter before this court, the applicant, through chamber summons, invoked Section 11(1) of the Appellate Jurisdiction Act [Cap 14 R.E: 2019], seeking the following reliefs;

*a) That this honourable court may be pleased to extend  
the time for the applicant to file application for leave to  
appeal at the Court of Appeal against the ruling and  
order in PC Civil Appeal No. 53 of 2022 by the High  
Court of Tanzania (Temeke Sub-registry) at One Stop*

*Judicial Centre- Dar es salaam before Hon. A.A. Omari*

*J dated 22<sup>nd</sup> May, 2023.*

*b) Costs of this application be provided for.*

*c) Any other relief that this honourable court may deem fit to grant.*

This application was supported by an affidavit sworn by the applicant, and it was contested by the respondent through a counter-affidavit.

During the hearing, both parties, having appeared in person, agreed to proceed with written submissions. The applicant urged the court to adopt his affidavit as part of his submissions.

On the written submission of the applicant, he argued that the application sought an extension of time due to the expiration of the original time limit, emphasizing the court's discretionary power to grant such extensions under the precedent of **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2015, Court of Appeal at Arusha.

The applicant further cited Rule 45(a) of the Tanzania Court of Appeal Rules, GN 344 of 2019, which requires the application for leave to be filed within thirty days from the decision. In this case, the decision was delivered on 22/5/2023, and the application was filed on 7/8/2023, with the fee paid on 23/8/2023, resulting in a delay of about 46 days.

The applicant deposed affidavit in his affidavit that he mistakenly lodged his appeal before seeking leave from the high court, and when the appeal was returned on 2/8/2023, he was instructed to seek leave first. He argued that the delay was not due to negligence on his part.

Additionally, the applicant asserted that the matter originated from the primary court, and therefore, the Law of Limitation [Cap 89 R.E 2019] should not apply. He claimed that the high court overlooked the Judicature and Application of Laws (Electronic Filing) Rules, 2018.

The applicant prayed for the Court of Appeal to intervene and grant him the right to be heard, emphasizing potential irreparable loss if leave is not granted, as he would be denied his inheritance rights as the deceased's husband. He referred to the case of **Sanyou Service Station Ltd. V. BP Tanzania Ltd (Now Puma Energy (T) Ltd)**, Civil Application No. 185 of 2018, Court of Appeal at Dar es salaam and urged the court to exercise its discretion judiciously.

In response, the respondent, represented by the Women Legal Aid Center (WLAC), argued that the applicant failed to provide sufficient cause for the court to exercise its discretion in extending the time limit. Reference was made to the case of **Regional Manager, TANROADS Kagera v. Ruaha Concrete Company Limited**, Civil Application No.

96 of 2007, Court of Appeal of Tanzania at Dar es salaam, where the court emphasized the need for the applicant to present material justifying the exercise of judicial discretion.

The respondent contended that the applicant's negligence and lack of sufficient reasons for the delay should not be excused, as ignorance of the law cannot be a valid reason. The respondent prayed for the dismissal of the application with costs.

In the rejoinder submission, the applicant argued that the amendment of section 5 of the Appellate Jurisdiction Act [Cap 141 R.E. 2019] by Miscellaneous Amendments Act No. 11 of 2023 eliminated the requirement of leave to appeal against decisions arising from ex parte or preliminary decisions of the high court. The applicant asserted that, due to the retrospective effect of this amendment, his application had been overtaken by events, and therefore, he urged the court to strike it out with no costs. Citing the case of **Petro Robert Myavilwa v. Zera Myavilwa and another**, Civil Application No. 117/06 of 2022, from the Court of Appeal of Tanzania at Mbeya.

After considering the submissions from both parties and the change in procedural law brought about by the amendment of section 5 of the Appellate Jurisdiction Act, this court finds that the applicant's application

to extend time has become moot. The retrospective effect of the amendment means that the requirement for leave to appeal has been removed.

A legal matter becomes incompetent for being overtaken by events from the operations of law when subsequent legal changes render the proceedings or relief sought irrelevant, or unnecessary. This typically occurs when legislature amends, or creates new law; altering the rights, obligations, or remedies available to the parties involved.

Changes on procedural law apply retrospectively and therefore the previous legal/procedural requirement becomes obsolete. In such instances, the court may determine that pursuing the case under the old legal regime is no longer meaningful, as the matter is considered incompetent.

In most times in those circumstances the remedy is to strike out the matter that is pending before the court. This is done to maintain efficiency, avoid unnecessary litigation, and ensure that legal proceedings reflect the current legal standards and requirements. This court also makes reference to the case of **Petro Robert Myavilwa v. Zera Myavilwa and another**, (cited supra) where the matter was overtaken by event and it was struck out.

Given that the law came into operation on 1/12/2023, and the application is overtaken by these legal events, the court finds it appropriate to strike out the matter with no order as to costs.

It is so ordered.

**Dated at Dar es Salaam** this 17<sup>th</sup> of January, 2024.



A handwritten signature in black ink, appearing to read "G.N. Barthly", is written over a horizontal line.

**G.N. BARTHY**

**JUDGE**

Delivered in the presence of both parties and Ms. Beranadina RMA