

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT BUKOBA

BUKOPA SUB-REGISTRY

MISC. LAND APPLICATION NO. 6714 OF 2024

(Arising from Miscellaneous Land Application No. 6 of 2023 and Miscellaneous No.8 of 2020 of the High Court at Bukoba, Miscellaneous Application No. 5 of 2022 and Land Case No.48 of 2019 of the Magistrates' Courts of Bukoba with Extended Jurisdiction and Land Appeal No.253 of 2011 of the DLHT of Bukoba, originating from Land Case No.14 of 2011 of Ishoju Ward Tribunal.)

PASCRATES PASKALI..... APPLICANT

VERSUS

DEONISIASI KAGANDA..... RESPONDENT

RULING

24/06/2024 25/06/2024
E. L. NGIGWANA, J.

This ruling is seeking to address the issue raised by court suo motu inviting parties to address it on whether the application is properly lodged to the right court with jurisdiction to entertain the same.

This application is for an extension of time to apply for certified copies of the ruling and drawn order, judgment, and decree, as well as all proceedings related to Misc. Land Application No. 6 of 2023 and Misc. Land Application No.8 of 2020 of the High Court of Tanzania at Bukoba, also Misc. Land Application No.5 of 2022 and Land Case Appeal No. 48 of 2019 of the Resident Magistrates' Court of Bukoba with Extended Jurisdiction.

This application is made through chamber summons, under section 14 (1) of the Law of Limitation Act [Cap 89 R.E 2019], Rule 13 (1) and 16 of the Judicature and Application of Laws Act (Transfer and Management of Cases Assigned to Magistrates with Extended Jurisdiction Rules 2023 GN no. 11 of 2023), along with Rule 90 (1) of the Tanzanian Court of Appeal Rules 2009 GN No. 344 of 2019. The application was supported by an affidavit deposed by the applicant.

Upon All parties' consensus, the court ordered that the hearing would proceed through written submissions. Mr. Pereus Mutasingwa, a learned counsel, was engaged by the applicant for drawing only whereas Mr. Lameck John Erasto was also engaged for drawing only.

While the court was in the process of composing it's ruling, it re-opened the proceedings and brought up the aforementioned issue for consideration suo motu, and invited counsels from both sides to enter appearance in court and address the court on the same, which is the focal point of this ruling.

Mr. Pereus Mutasingwa submitted that applications arising from the normal course which is the High Court for extension of time within which to apply for copies of proceedings, judgment and decree for the purpose of appeal to the Court of Appeal ought to be entertained by the Court of Appeal. He cited

two cases to wit; **Emmanuel R. Maira versus The Executive Director & Another**, Civil Application No.66 of 2010 CAT (unreported) and the case of **Dr. Ali Chambuso versus Paul Elisa Maro & Another**, Miscellaneous Civil Application No. 589 of 2021 HC Dsm Registry, and Rule 10 of the Court of Appeal Rules, 2009 to support his stance.

He went on to submit that applications for extension of time within which to apply for copies of proceedings, judgment and decree on matters from courts with extended jurisdiction; for the purpose of appeal to the Court of Appeal, ought to be entertained by the High Court. He was fortified by section 13 (1) of the Judicature and Application of Laws (Transfer and Management of Cases Assigned to Magistrates with Extended Jurisdiction) Rules, 2023 and Rule 47 of Tanzania Court of Appeal Rules, 2009. As regards the Law of Limitation, he submitted that the same is applicable in the High Court thus it was properly cited to move the court.

He concluded his submission by saying that the application on hand is proper and the above-mentioned cases are distinguishable since they did not originate from a court with extended jurisdiction and they occurred before the enactment of the enabling provision to wit; Rule 13 (1) of The Judicature

and Application of Laws (Transfer and Management of Cases Assigned to Magistrates with Extended Jurisdiction) Rules, 2023.

On his side, Mr. Lameck Erasto submitted that reading the cited cases and the provisions used to move this court; it goes without saying that this court has no jurisdiction over this matter. He added that Rule 13 (1) the Judicature and Application of Laws (Transfer and Management of Cases Assigned to Magistrates with Extended Jurisdiction) Rules, 2023 is not sufficient to show that it is the High Court which has jurisdiction to entertain such an application. He further submitted that Mr. Mutasingwa had not cited any decided case of the Court of Appeal or this court which interpreted Rule 13 (1). He concluded his submission urging the court to strike out this application for being incompetent.

After thoroughly evaluating the arguments put forth by both knowledgeable advocates on the issue raised by the court, it is now my task to determine the competence of this application.

The applicant's prayer for extension of time to apply by letter for issue of certified copies of Judgement and decree on appeal as well as the proceedings out of time was made under section 14 (1) of the Law of Limitation Act [Cap 89 R.E 2019], Rule 13 (1) and 16 of the Judicature and

Application of Laws Act (Transfer and Management of cases Assigned to Magistrates with Extended Jurisdiction, Rules 2023 GN No. 11 of 2023), along with Rule 90 (1) of the Tanzania Court of Appeal Rules, 2009 GN No. 344 of 2019.

I will start by elaborating on the application of rule 13 (1) of the Judicature and Application of Laws Act (Transfer and Management of cases Assigned to Magistrates with Extended Jurisdiction, Rules 2023 which states as follows;

"13.-(1) Application arising from matters transferred to a magistrate, whether filed when the matter transferred is pending or after its determination, shall be filed before the High Court."

The above position does not stand alone as it provides for the general rule on applications originating from Magistrates with Extended Jurisdiction so as to allow the judge in-charge to transfer the same to the Magistrate with Extended Jurisdiction as stipulated under Rule 13 (2) as here below;

"13.-(2) Upon admission of the application filed under sub-rule (1), the Judge in charge shall issue a transfer order of an application which shall be substantially in Form C set out in the First Schedule to these Rules."

It is my considered view that the intention here is not on the applications that are supposed to be determined by the appellate court which is the Court of Appeal. For example, one could not dare mention that rule 13 (1) includes all applications including revision which is something done by the Court of Appeal, same goes for extension of time to apply for letters for certified copies of proceeding and judgment and orders as the same are provided under rule 90 (1) of Tanzania Court of appeal Rules, 2009. It is only the Court of Appeal that can entertain an application of this nature.

Therefore, the citation of Rule 13 (1) and 16 of the Judicature and Application of Laws Act (Transfer and Management of cases Assigned to Magistrates with Extended Jurisdiction Rules 2023 GN No. 11 of 2023 is misplaced, as they provide that all applications arising from matters transferred to magistrates shall be concluded there. Rule 13 (1), (2) does not provide anything for extension of time.

It is therefore obvious that rule 13 simply suggests that if this particular application had been appropriate, it could have been transferred to the Magistrate with Extended Jurisdiction for determination.

I would also like to clarify that section 14 (1) of LLA is not applicable in this case, as the time frame for requesting copies of judgment, proceedings, and

decree for appeal to the Court of Appeal is determined by the Court of Appeal Rules 2009. Rule 90 (1) of the Court of Appeal rules specifically allows for 30 days to apply for said copies for appeal. The provision reads:

*"90.-(1) Subject to the provisions of rule 128, an appeal shall be instituted by lodging in the appropriate registry, within sixty days of the date when the notice of appeal was lodged with – (a) a memorandum of appeal in quintuplicate; (b) the record of appeal in quintuplicate; (c) security for the costs of the appeal, save that where **an application for a copy of the proceedings in the High Court has been made within thirty days of the date of the decision against which it is desired to appeal**, there shall, in computing the time within which the appeal is to be instituted be excluded such time as may be certified by the Registrar of the High Court as having been required for the preparation and delivery of that copy to the appellant."*

Although the Rule govern the procedure for applying copies of proceedings for appeal purposes to the Court of Appeal, it is important to note that the extension of time for such applications is also provided for under the same law considering the fact that in terms of section 4 (1) of the AJA, the Court

of Appeal hears appeals from the High Court and from Subordinate courts with Extended Jurisdiction.

The powers of the Court of Appeal to grant such extensions are derived from the provisions of Rule 10 of the Rules. See the case of **Dr.Salum Ali Chambuso vs Paul Elisa Maro & Another (Supra)**. Rule 10 of the Rules provides:

"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"

Based on the aforementioned explanation of the law, it is clear that the application for proceedings in order to appeal to the Court of Appeal must adhere to the Rules. The extension of time procedure is not only regulated by the Rules but also falls under the jurisdiction of the Court of Appeal.

Therefore, it is an undisputed conclusion of this Court that the request for an extension of time to apply for proceedings from the Registrar cannot be

considered by this Court. This Court in the case of **Stanbic Bank Tanzania Limited versus Paul Franciscal Kilasara, Misc. Civil Application No. 586 of 2021 (HC-unreported)** had a similar stance in a situation similar to the current one, the applicant maintained a comparable position when faced with the need to request an extension of time. Apart from applying for an extension of time to file a notice of appeal and an application for leave to appeal to the Court of Appeal, the applicant also sought an extension of time to apply for proceedings to the Registrar. It was held that:

"It is apparent from the above provision that, the mandate to extend time set out by the CAT Rules is vested in the Court of Appeal. That being the case, 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."

Based on the reasons stated above, I have determined that the applicant did not file an application on the right court with jurisdiction to entertain it. In the event, I strike out the application for want of jurisdiction. Each party to bear its own costs as the issue disposing of the application has been raised by the court *suo motu*. It is so ordered.

Dated at Bukoba this 25th day of June 2024.



E.L. NGIGWANA

JUDGE

25/06/2024

Ruling delivered this 25th day of June, 2024 in the presence of both parties in person, Hon. A. A. Madulu - JLA and Ms. Queen Koba, B/C.



E.L. NGIGWANA

JUDGE

25/06/2024