

**IN THE HIGH COURT OF TANZANIA**

**MUSOMA SUB – REGISTRY**

**AT MUSOMA**

**MISC. LAND APPLICATION NO. 83855 AND 25480 OF 2023**

**REF NO. 20231114000083855**

*(Arising from Civil Appeal No. 01 of 2023 at Bunda District Court)*

**BETWEEN**

**KAMPUNI YA MABASI YA ZACHARIA..... APPLICANT**

**VERSUS**

**MARIAM CHARLES..... RESPONDENT**

**RULING**

*14<sup>th</sup> & 15<sup>th</sup> March, 2024*

**M. L. KOMBA, J.:**

By way of Chamber Application, the applicant herein above lodged the present application under the provisions of section 25(1) (b) of the Magistrate Courts Act, Cap. 11 R.E. 2019 and any other enabling provisions, seeking for extension of time within which the applicant may file an appeal out of time in respect of the ruling in Civil Appeal No. 01 of 2023 decided on 10/03/2023. The application is supported by affidavit dully deponed by the counsel for applicant. The application is being counter attacked by a counter affidavit filed by Mariam Charles, the respondent.

The brief facts leading to the present application are as follows: Via Civil Appeal No. 01 of 2023 the applicant was appealing against the decision in Civil Case No. 148 of 2022 decided by Primary Court of Bunda Urban. Following Preliminary Objection on the use of Swahili language, the appeal was dismissed instead of being struck out. By that time the applicant was already out of time hence applied for extension of time via Misc. Application No. 8 of 2023 which was struck out with leave to refile within 14 days. Upon rectification of the errors the applicant is here again seeking for time to pursue his rights.

This application was objected by the respondent on the ground that;

- 1. The instant application is incompetent and bad in law for being moved with wrong provision in contravention of Rule 3 of the Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules 1963 GN 312 of 1964).*

At the hearing the applicant was represented by Mr. Onyango Otieno while the respondent enjoyed the legal service of Mr. Aloyce Kajitanus both advocates.

Mr. Kajitanus was the first to argue his PO that the application for extension of time by the applicant moved this court by section 25 (1)(b) of

Magistrate Court Act, Cap 11 (the MCA) and in affidavit counsel explained that the matter originate from primary court in Civil Case No. 148 of 2022. Mr. Kajitanus was of the submission that so far as the matter started from the Primary court, the relevant provision was rule 3 of the Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules 1963 GN 312 of 1964 (the rules) which provides that the application for extension of time has to be attached with petition of appeal.

He noted that the application was attached with relevant document but he insisted that the attachment is not enough rather the applicant must move the court in the proper regulation. Failure to that the application is baseless as they lack the foundation as stipulated in rule 3. To cement his submission, he supplied the decision in **Icheetah Logteck Tanzania Limited Vs Alfrodge Tanzania (Alfred Mtulavanu (Civil Application No. 362 of 2023) [2023] TZHC 22400 (2 November 2023)** where the applicant used section 25 (1) (b) and the judge said for failure to include rule 3 the application becomes baseless because is the requirement of the law. The same position was seen in **Janeth Samwel vs Charles Alphonce**, Matrimonial Appeal No 9 of 2019 that rule 3 has to be adhered and it is a legal regime which govern all civil appeal originated from the

Primary court. Also, in **Asha Said vs Give Mayanga and another**, Misc Civil Application No. 28 of 2003, **Zainab A. Nzota vs Omar Mahimbi**, Misc Civil Application No. 429 of 2021 and **Matrida Grinyo Mwanahanji vs Zuhura Hussein Kilambo**, Misc Civil Application No. 31 of 2023.

It was his submission that in this application the applicant moved this court with section 25 only while the matter did not originate from District court. He insisted that the use of rule 3 is legal requirement prayed this court to struck out this application as it does not meet requirement of the law and does not comply with order of Hon. Moshi who ordered application to be filed within 14 days. He prayed this with costs.

On the hand Mr. Otieno object to PO on the ground that rule 3 of the Rules is to the effect that the application shall be in writing, set the date and shall accompany petition of appeal or set grounds of objection decision or order. he said the rule use the word shall that applicant has to abide with requirements. The applicant has cited section 25 (1) (b) of the MCA which requires appeal to be lodged to High Court and it is the High Court which may extend time. He further submitted that all the cited cases are

persuasive and are not binding to this court. In **Kampuni ya Mabusi ya Zakaria vs Mariam Charles** Misc Application No. 8 of 2023 before Hon. Moshi with Extended Jurisdiction it was found that section 25 (1) (b) of the MCA is substantive law and the procedure is provided under rule 3 of the rules. It was his further submission that the rules are for complying while filing the application which was adhered.

If it happens there is problem in interpretation of the ruling (Misc Application No. 8 of 2023) he said the respondent is one to be blamed as he did not challenge the ruling of Hon. Moshi on procedure neither did he appeal and therefore there is no redress from the upper court. Mr. Onyango insisted that the application was filled in adherence of procedures. So far as the PO is filed repeatedly as previously was raised in Misc Application No. 8 of 2023, he prayed the PO to be dismissed with costs.

In rejoinder Mr. Kajitanus insisted that Hon. Moshi in Misc Application No. 8 of 2023 struck out application and order the procedure to be adhered and he said it is impossible to comply with the procedure without mentioning the rule, to him the said rule 3 was not adhered. In differentiating the two

provisions of law he was of the submission that section 25 of the MCA is applicable at the District level and rule 3 is responsible for Primary Court.

After the partys' submission this court invited both to address on the relevancy or otherwise of utilizing Overriding Objective.

Mr. Kajitanus submitted that section 3A of the CPC has provided the overriding objective but the principle cannot be applicable because the use of rule 3 is the requirement of the law.

Mr. Onyango was of the submission that the overriding objective directs that Courts shall not be tied with technicalities and must determine real issue in controversy. In essence there are rules/procedure and law and the overriding objective is introduced for that purpose. Rule 3 has set a procedure on how to appeal from Primary Court. To him rule 3 is not enabling provision rather is a procedure. So far as procedure requirement has been met in application, the requirement of mentioning rule 3 is technical issue which the court was warned.

After hearing the parties on their respective submissions and after scrutinization of the records of the case as well as reading the authorities

cited, I have to determine where the application is properly before this court.

There is no doubt that the matter originated from the Primary Court and the appeal is preferred to the High Court. Respondent resist the application as rule 3 is not mentioned in chamber summons. Applicant is of the position that rule 3 provides the procedure and is not enabling provision. It just mentions what to be attached while a party is applying for extension of time.

My perusal in cited provision shows the following;

*25.-(1) Save as hereinafter provided-*

*(b) in any other proceedings any party, if aggrieved by the decision or order of a district court in the exercise of its **appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal there from to the High Court; and the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired.***

On the other hand, Rule 3 of the Civil Procedure (Appeals Originating from Primary Courts) Rules GN No.312 of 1964 provides that:

*3.Applications for leave to appeal out of time*

*An application for leave to appeal out of time to a district court from a decision or order of a primary court or to the High Court from a decision or order of a district court in the exercise of its appellate or revisional **jurisdiction shall be in writing, shall set out the reasons why a petition of appeal was not or cannot be filed within thirty days after the date of the decision or order against which it is desired to appeal, and shall be accompanied by the petition of appeal or shall set out the grounds of objection to the decision or order.***

*Provided that where the application is to a district court, the court may permit the applicant to state his reasons orally and shall record the same.*

The referred rule 3 provide the procedure and documents to be attached. Mr. Kajitanus submitted that all necessary documents has been attached in chamber summons but the rule is not cited in the heading. I find the rule provides for procedures and some of the cited cases by the respondent in his objection insisted on the adherence of the procedure while others have different issues. For instance, in **Icheetah Logteck Tanzania ltd vs Alfrodge Tanzania** (supra) the applicant did not attach the petition of the appeal but he states in affidavit and submission grounds of his objection the decision of the District Court of Ilala. In the referred case, this court (Dar es salaam sub-registry) was moved by section 25 of MCA only as seen



at page 8 of the judgement and upon satisfied that procedures were adhered the trial Judge proceeded to determine application on merit. (see page 12). The applicant failed to register good cause for extension of time hence his application considered to have no merit (see page 20-21).

Without further ado, so far as the procedures as stipulated in rule 3 were adhered, am satisfied that this court was properly moved by chamber summon, the Preliminary Objection is of no merit and all is needed is to determine application in merit.

Costs awarded to applicant.

It is so ordered



*Nk*  
**M. L. KOMBA**  
**Judge**  
**15<sup>th</sup> March, 2024**

Ruling delivered in chamber while this court operates from Tarime District Court in the presence Mr. Onyango Otieno, Advocate for Respondent and in the presence of Mr. Kajitanus, Advocate for the applicant who was via teleconference, a service provided by Judiciary of Tanzania.

*Nk*  
**M. L. KOMBA**  
**Judge**  
**15<sup>th</sup> March, 2024**