

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 1 OF 2017**

**MOHAMED RAMADHANI KATUNDU.....APPLICANT**

***VERSUS***

**MUSSA ALLY BARAKA.....RESPONDENT**

**R U L I N G**

*Date of Last Order:*     25/5/2018  
*Date of Ruling:*       31/08/2018

**MGONYA, J.**

A Preliminary Objection has been raised by the Respondent herein namely **MUSSA ALLY BARAKA** to the effect that the present Application in which the Applicant one Mohamed Ramadhani Katundu is moving the Court to grant extension of time within which to file an Appeal out of time in **(Land Application No. 162 of 2008)** and the execution of the drawn order of above case to be stayed pending hearing of this Application is time barred.

The preliminary point was disposed by way of Written Submission. Mr. Kayombo learned Counsel appeared for the

Respondent to argue this Preliminary Objection, the Applicant had no legal representation.

Submitting in support of the preliminary objection, the Respondent maintained that one of the requirement that the Court is regarding on granting leave for extension of time to appeal out of time is to consider if the Appeal has chances to success. He further submitted that logically the Court cannot be in a position to know if there is any chances of success if it cannot see the copy of the Judgment intended for Appeal. That is why courts have insisted that an application for leave to appeal out of time must be accompanied with copy of the intended appeal.

The Respondent referred the court in case of ***SAMSON KUSHOSHA GABBA VS. CHARLES KIGONGU GABBA (1990) TLR 133*** it was held that:-

***"In determining whether or not to allow an Application for leave to appeal out of time the court has to consider reasons for the delay as well as the likelihood of success of the intended appeal."***

From the said stand, the Respondent's Counsel submitted that this can only be possible if a copy of the intended appeal has accompanied the Application.

The Respondent further cited a case of ***MWAIMUSIKU VS. KANYIGI (PC) Civil Application (1970) HCD No. 240.*** In this case the Court refused to grant leave after it had considered the intended appeal and found that it has no chance of success.

Again, the Respondent cited another case, that of ***RAJABU KADIMWA NG'ENI AND ANOTHER VS. IDD ADAM (1991) TLR 38*** in which the Court held that:-

***"Since the intended appeal had absolutely no chance of success the Application must fail."***

Respondent averred that in the above case the applicant had file with copy of the intended appeal which the court considered and found that it has no chance of success; so that attachment of a copy of intended appeal was mandatory because the court had to consider if the appeal has chance or not.

Therefore, failure to attach a copy means the High Court cannot access whether the appeal has chances of success.

The Respondent submitted that, if the above is the legal position, then the Application herein is incurably defective and subject to dismissal with costs for lack of the attachment with the copy of Judgment subject to Appeal.

The Applicant choose to remain silence, that means, he didn't reply to the submission attaching the Application in support of the Preliminary Objection.

I have carefully followed the submission made by J. W. KAYOMBO, learned Counsel for the Respondent and I have carefully perused court records, I have the settled mind that, the law is clearly as stated in case of ***RUDOLF TEMBA & ANOTHER VS. ZANZIBAR INSURANCE CORPORATION, COURT OF APPEAL OF TANZANIA in Civil Application No. 167 of 2008 (Dar es Salaam Registry Unreported)*** where the Court held that:-

***"Leave to appeal will be granted where the grounds of appeal rise issues of general importance, a novel point of law or where the grounds shows a prima facie or arguable appeal."***

Again the same position was stated in a case of ***HARBAN HAJI MOSI AND ANOTHER VS. OMARI HILAL SEIF AND ANOTHER (2001) TLR 409*** at the Court of Appeal states that:-

***"Leave is grantable where the prosed appeal stands reasonable chance of success or where but not necessarily, the proceedings as a while reveal such disturbing features as to require to guidance of the***

***Court of Appeal. The purpose of the provision therefore to therefore to spare the court the specter of unmeriting matters and to enable it to give adequate attention to cases of true public importance."***

In line with the above authorities and having considered the averments contained in the Applicant's affidavit, whereby the Applicant's stated at paragraph 4 that:-

***"4. That when I came back to Dar es Salaam I found that, I am bound by limitation of time to file Notice of Appeal and to lodge my Appeal, but later I came to realize that I am supposed to file an Application for extension of time to file my Appeal."***

It was in the court record that, the Applicant further stated that, after knowing that he was supposed to file the Application for extension, again he failed due to the continuance of his physical disability in his leg hence the decree holder made an application for execution.

He went to submit further that on 2/4/2014 he managed to file the Application vide Application No. 519 of 2015 before Mkuye, which was struck out for being incurable defective on 11/11/2016 and I obtain the copy of the same on 19/12/2016. And now a decree

hold was in a process of executing the Judgment pronounced 20/6/2008 unless this Court issues an order for stay of execution without that the Application for extension of time to Appeal will be meaningless.

Unfortunately, after going through the Applicant affidavit, I found that the Applicant never lodge a Notice of intention to Appeal before this Court. The Applicant stated this at paragraph 4 of his Affidavit; as I have already quote it above.

Since the Applicant failed to file a Notice of Appeal to show his intension to file Appeal, henceforth the Application for extension of time to file an Appeal out of time cannot stand at all.

The Applicant was supposed to start with an Application for extension of time to file a Notice of intention to Appeal out of time followed by the said Application at hand.

On the other hand, I concur with the Respondent that the failure to attach a copy of the intended Appeal before this Court lead the Court not to assess whether the Appeal had chances of success. The attachment of a copy of intended Appeal is mandatory as the Court should consider if the Appeal has a chances of success or not.

Therefore, I am settled in my mind that there're is no arguable appeal. And for that matter, there has no need for the

Court of Appeal to adjudicate upon the rival contention by the parties.

Thus being the case **the Preliminary Objection is hereby sustained and I proceed to dismiss the Application with no order as to costs.**

It is so ordered.



**L. E. MGONYA**

**JUDGE**

**31/8/2018**

**COURT:** Ruling delivered before the Hon. S. Ding'ohi, Deputy Registrar in the presence of Applicant and Ms. Caroline RMA on 31<sup>st</sup> day of August, 2018 in chamber No. 18.



**L. E. MGONYA**

**JUDGE**

**31/8/2018**