

IN THE COURT OF APPEAL OF TANZANIA

AT TABORA

CIVIL APPLICATION NO. 544/11 OF 2018

KAHAMBI IDD.....APPLICANT

VERSUS

HIDAYA SHABANI.....RESPONDENT

**(Application for extension of time within which to lodge a notice of appeal
and an application for a certificate on a point of law against the decision
of the High Court of Tanzania
at Tabora)**

(Rumanyika, J.)

Dated the 24th day of August, 2017

in

PC Civil Appeal No. 17 of 2017

RULING

26th & 28th November, 2019

WAMBALI, J.A.:

The respondent, Hidaya Shabani sued the applicant, Kahambi Idd before the Primary Court of Ujiji at Kigoma in Matrimonial Case No. 23 of 2016. In that suit she prayed to the trial Primary Court to declare that, her marriage with the applicant had broken down irreparably and that as a consequence, there should be division of the matrimonial assets. In addition, she prayed to the trial court to order the applicant to pay Tshs. 150,000/= per month as maintenance costs for their three children. The trial primary court substantially granted the prayers of the respondent.

Dissatisfied, the applicant successfully appealed to the District Court of Kigoma in Matrimonial Appeal No. 14 of 2016. Nevertheless, as the respondent was aggrieved with that decision, she successfully appealed to the High Court at Tabora in PC. Civil Appeal No. 17 of 2017.

The dispute between the parties did not end there as subsequently, on 31st August, 2017 the applicant lodged a Notice of Appeal against the decision of the High Court.

On the other hand, as the applicant did not manage to apply for a certificate on a point of law as required by law for the intended appeal originating from the decision of a primary court within the prescribed time, he lodged Miscellaneous Civil Application No. 72 of 2017 before the High Court in which he sought extension of time to lodge the requisite application. Unfortunately, that application was dismissed with costs after the High Court found that it lacked merit.

As a result, after almost more than seven months, the applicant on 2nd October, 2018 lodged the current application seeking extension of time; first, to lodge a notice of appeal out of time; and second, to lodge an application for certificate on a point of law after the High Court refused to grant his prayer to that effect.

The application has been preferred through a notice of motion supported by the affidavit of Kahambi Idd, the applicant.

On the other hand, the respondent lodged an affidavit in reply opposing the application.

At the hearing, both the applicant and the respondent appeared in persons, unrepresented.

At the outset, I requested the parties to submit on whether the application is properly before the Court. The request was made in view of the following issues. Firstly, whether the applicant can seek extension of time to lodge the notice of appeal out of time, while there is a copy of the notice of appeal against the decision of the High Court dated 31st August 2017. Secondly, whether the application for extension of time to lodge an application for certificate on a point of law which was lodged after the refusal of the High Court to grant a similar application was preferred within the prescribed period of fourteen days.

In response, the applicant conceded that the notice of appeal is still intact, but was concerned that the same has been overtaken by events based on the advise from some of his friends.

Moreover, he conceded that the application for extension of time within which to lodge an application for a certificate on a point of law was lodged after longtime after the High Court refused to grant his prayer on a similar application on 20th February, 2018. Nevertheless, the applicant prayed that as he is not knowledgeable in matters of law, the Court should disregard those issues and proceed to hear his application and grant the prayers therein.

On her part, the respondent emphasized that the applicant's application is incompetent as the same was lodged out of time. She further stated that the applicant is simply delaying the execution of her decree while being aware that the application has no merit at all. She thus prayed that the application be struck out with costs. She did not wish to comment on the status of the existing notice of appeal.

On my part, I have no hesitation to state that the present application is misconceived and incompetent. Firstly, it is not doubted that, the notice of appeal which was lodged by the applicant against the decision of the High Court on 31st August, 2017 is still intact as the same has not been withdrawn or deemed to have been withdrawn in terms of Rule 91(a) of the Tanzania Court of Appeal Rules, 2009 (the Rules) as there is no evidence to that effect. Besides, even if the said notice of

appeal could have been withdrawn, still the applicant could not have come directly to this Court to apply for extension of time within which to lodge a fresh one, as he has done in the present application. This would be contrary to the requirement of Rule 47 of the Rules and section 11 of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 (the AJA). In terms of those provisions an application of this nature must in the first instance be made to the High Court before the same is made to this Court on a second bite upon refusal by that court.

In the event, I find that the prayer for enlargement of time within which to lodge a fresh notice of appeal is misconceived.

Secondly, it is the requirement of the law, in terms of Rule 45A (1)(c) of the Rules that, where on application for extension of time within which to lodge an application for a certificate on a point of law is refused by the High Court, a similar application to this Court must be made within fourteen days of the refusal. For purpose of clarity Rule 45A (1)(c) provides as follows:

*"Where an application for extension of time to:
(c) apply for a certificate on a point of law,
is refused by the High Court, the applicant
may within fourteen days of such decision
apply to the Court for extension of time."*

In the circumstances, as the previous application for extension of time within which to apply for a certificate on a point of law was refused by the High Court on 20th February, 2018; and whereas the present application was lodged on 2nd October, 2018, (almost after more than seven months), I entertain no doubt that, the same was inordinately lodged out of the prescribed period of fourteen days.

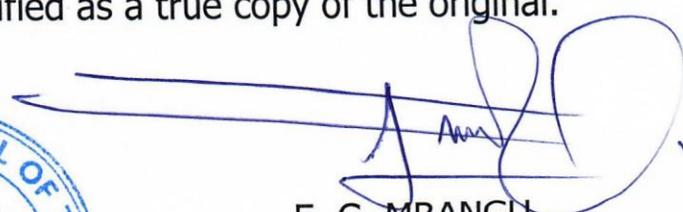
In the event, the application is time barred. I therefore agree with the respondent that the application before the Court is misconceived and incompetent. In the result, I accordingly strike it out with costs. It is so ordered.

DATED at TABORA this 28th day of November, 2019.

F. L. K. WAMBALI
JUSTICE OF APPEAL

The ruling delivered this 28th day of November 2019 in the presence of the applicant and respondent who appeared in persons is hereby certified as a true copy of the original.




E. G. MRANGU
DEPUTY REGISTRAR
COURT OF APPEAL