

IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)
AT MTWARA

MISC. LAND APPLICATION NO.9 OF 2022

(Arising from the High Court of Tanzania at Mtwara in Land Appeal No. 5 of 2020 and originating from the District Land and Housing Tribunal for Mtwara in Land Case No.99 of 2018)

YASINTA KAMBONA.....APPLICANT

VERSUS

NATIONAL MICROFINANCE BANK

(NMB -NDANDA BRANCH)RESPONDENT

RULING

25/8/2022 & 27/10/2022

LALTAIKA, J.:

The applicant, **YASINTA KAMBONA** is praying for this court to grant her leave to appeal to the Court of Appeal of Tanzania against the decision of the High Court of Tanzania at Mtwara in DC Civil Appeal No.4 of 2021 delivered on 14/12/2021 by Hon. W.P. Dyansobera, J. The applicant has moved this court under section 5(1)(c) of the Appellate Jurisdiction Act, [Cap. 141 R.E. 2019] and Rule 45(a) and (b) of the Tanzania Court of Appeal Rules,2009 as amended by the Tanzania Court of Appeal Rules,2017 and 2019 and any enabling provision of the laws.

The application is supported by the affidavit affirmed by the applicant. Needless to say, that the application is vehemently resisted by a counter affidavit deponed by Mr. **ROBERT MECKY CHAMI**, learned

advocate for the respondent. Initially, the respondent filed a Notice of the Preliminary Objections but later withdrew the same as will be explained in this ruling.

When this matter was called on for hearing on 18/8/2022, the applicant appeared in person and unrepresented while Mr. Emanuel Ngongi, learned Advocate appeared for the respondent. Mr. Ngongi prayed to withdraw his Notice of Preliminary Objections filed on 5/5/2022. The prayer was granted, hence the Notice of Preliminary Objections filed on 5/5/2022 was withdrawn.

However, shortly after the withdrawal, the learned counsel submitted that after he had gone through the court file, he discovered that the application is time barred. In that regard, the learned counsel proposed to address the issue of time before proceeding with the substance of the application. The parties by consensus agreed to dispose of the new Preliminary Objection on time by way of written submissions.

The hearing of the Preliminary Objection commenced. Mr. Ngongi contended that the law sets standards and duration of time of a certain matter to be filed in court and once that time lapses one cannot file the same without permission of the court. The learned counsel submitted that the time for filing leave to appeal is thirty days as per **Rule 45(a) of the Tanzania Court of Appeal (Amendments) Rules, 2017**.

The learned counsel went further and submitted that reading through the line of the provision 45(a) of the Court of Appeal Rules of 2017 there is no dispute that the period to apply for leave to appeal to the Court of Appeal is thirty days. The learned counsel argued that according to section 60(1)(a) the time start to run from the day the

decision was pronounced which is 14/12/2021. Mr. Ngongi contended that from 14/12/2021 to 12/01/2022 is where the said thirty days ended. He submitted that this application was filed on 13/01/2022 which was beyond thirty days. The learned counsel further submitted that the applicant had delayed to file this application for one day and she has not stated the reasons as to why she delayed filing the same. Mr. Ngongi termed it as abuse of the court procedure and law. The learned counsel stressed that a delay, even of single day has to be accounted for. To buttress his argument, Mr. Ngongi referred this court to the case of **Bashiri Hassan vs Latifa Lukio**, Civil Application No.3 of 2007(Unreported).

The learned counsel contended that although the 12th January 2022 was a public holiday namely Zanzibar Revolution Day, it was not proper to file the application on the last day while she had advantage to file the same before 12/01/2022. Moreover, the counsel contended that according to nature of this application the application is automatic out of time since the same its exclusion was not automatic but was suppose to file an application seeking for extension of time and the public holiday be one of her grounds for extension of time. To fortify his argument, the learned Counsel cited the case of **Alex Maganga vs Abubakar Mkakile and Director, Dar es Salaam City Council**, Misc. Land Case Application No.274 of 2020. To this end, the learned counsel prayed this application be dismissed.

In reply, the applicant submitted that the issue which is before this court is phrase "within thirty days of the decision". The applicant contended that the decision was delivered on 14/12/2021. The respondent went on and argued that the said month of December 2021 consisted of thirty-one (31) days. She contended that if you minus 14

days of the material December 2021 before the delivery of the material judgment remains seventeen days of grace and before attaining the 31/12/2021 the applicant was left with 13/01/2022 to accomplish a total amount of thirty (30) days as per Rule 45(a) of the Court of Appeal Rules,2017.

The respondent submitted that the counsel for the respondent anchored his computation under the provisions of Rule 45(a) of the Court of Appeal Rules of 2017 and section 60(1)(a) and (d) of the Law of Interpretation Act [Cap.1 R.E. 2019]. The applicant insisted that a delay, even a single day has to be counted for otherwise there would be no proof of having rules prescribed periods within which certain steps have to be taken. The applicant stressed that as it has been depicted the thirty days in question lapsed on 13/1/2022 the day the applicant lodged the disputed application but not as alleged by the counsel. The applicant submitted that even if the position of the learned counsel for the respondent might have been heeded still the day expired a day when the court in which such proceeding was to be instituted was closed; such days be it is a weekend, public holidays or whatsoever it might be **section 19(6) of the Law of Limitation Act [Cap. 89 R.E. 2019]** provides for the remedy thereof of excluding certain periods.

In addition, the applicant submitted that the learned counsel for the respondent stuck to the peripheral provisions which prescribe periods within which certain steps have to be taken ducking on the prominent provision of section 19(6) of the Law of Limitation Act. The applicant submitted that where the period of limitation prescribed for any proceeding expires on a day when the court in which such proceeding is to be instituted on the day on which the court reopens.

She further argued that section 60(1)(a) and (d) of the Law of Interpretation Act which underlined by the learned counsel is not a matter of dispute. The applicant insisted that the contention is how is computed and when its expiry is determined. The applicant submitted that on 12th January 2022 alleged by the counsel for the respondent that it was the expiry date for filing this application, the court was closed due to Zanzibar Revolution and was open on 13/01/2022 the date which the applicant filed this application. To cement her argument, the applicant submitted that in case she filed out her application then section 19(6) cures the contingent.

On the other hand, the applicant submitted that the Tanzania Court of Appeal (Amendments) Rules 2019 brought changes of moving away from procedural technicalities. She also contended that the Overriding Objectives Principle or "Oxygen Principle" were featured in the Appellate Jurisdiction Act which among others requires courts of law to avoid technicalities in dispensation of justice.

The applicant submitted on the importance of overriding objective principle. To buttress her argument, she cited the cases of **Arunaben Chaggan Ministry vs Naushad Mohamed Hussein and 3 Others**, Civil Application No.6 of 2016 CAT Arusha and **The Principal Secretary, Ministry of Defence and National Service vs Devram Valambia** [1992] TLR 182. The applicant further submitted that the main issue for consideration and determination is whether or not good cause has been established by the applicant. She further contended that the counsel for the respondent did not touch the core elements of determining good causes before the application is granted or not zeroed in his preconception about the computation and how is stipulated in the decision of the **Alex Maganga vs Abubakaari Mkakile and Director** (supra). To this end,

the applicant prayed this court to overrule the preliminary objection since was preconceived and just wasting time of this court since the instant application was lodged within time.

Having keenly considered the submissions of both parties, I am inclined, at this juncture, to determine the merit or demerit of the Preliminary Objection raised by the respondent. At the outset the period for lodging an application for leave to Appeal to the Court of Appeal is provided under Rule 45(a) of the Tanzania Court of Appeal Rules 2009 as amended by the Tanzania Court of Appeal (Amendments) Rules, 2017 by G.N. 362 OF 2017. The provision of the law is very clear that when the formal application is made by way a chamber summons and according to the practices of this court the period given is thirty (30) days of the decision. For easy of reference Rule 45(a) reads as follows: -

"45.(a) notwithstanding the provisions of rule 46(1), where an appeal lies with the leave of the High Court, application for leave may be made informally, when the decision against which it is desired to appeal is given, or by chamber summons according to the practice of the High Court, within thirty days of the decision."

It is also true as submitted by the learned counsel for the respondent that section 60(1) (a) and (d) of the Interpretation of Laws Act gives the mode on how computation of the period is made. However, in the present case the respondent complained that the application is time barred since was filed 31 days after the day of the decision. Despite the fact that, the applicant has employed section 19(6) of the Law of Limitation Act that since the period of limitation to file the application (proceeding) was on 12/01/2022 the day which was a Public Holiday (Zanzibar Revolution Day) expired because the court in which proceeding had to be instituted was

closed, thus the applicant took advantage of instituting the application (proceeding) on the day on which the court was reopened. With this argument, the applicant believes that she filed her application on time.

In fact, this court does support the position taken by the applicant since section 19(6) of the Law of Limitation Act exclude the period of public holidays as it was in the present matter. On that premise, I find the preliminary objection of the respondent has no merit because the law is settled that whenever a day for filing a proceeding falls on the public holiday that day shall be excluded, and the proceeding may be instituted on the day when the court is reopened.

In the present case the registry of this court was closed on 12/01/2022 the day which marked the end of thirty days. However, the registry was reopened on 13/01/2022 the day which the applicant lodged this application. Based on the herein above observation and the applicability of section 3A (1) and (2) of the Appellate Jurisdiction Act (on the Overriding Objective Principle) I am convinced that the applicant filed her application on time.

In the upshot, I find the preliminary objection by the respondent is devoid of merit hence, I dismiss it with no order as to costs and the hearing of the main application should proceed.

It is so ordered.



E.I. LALTAIKA

A handwritten signature in blue ink, appearing to read 'E.I. Laltaika', written over a horizontal line.

**JUDGE
27.10.2022**

Court

This Ruling is delivered under my hand and the seal of this Court on this 27th day of October 2022 in the presence of Mr. Emmanuel Ngongi for the respondent and the applicant who has appeared unrepresented.



E. I. LALAIKA

A handwritten signature in blue ink, appearing to read "E. I. Lalaika", is written over the printed name.

JUDGE

27.10.2022