

IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA

CIVIL APPLICATION NO. 3 OF 2013

MARTHA KHOTWE.....APPLICANT

VERSUS

MISTON MWANJAMILA.....RESPONDENT

(Revision from the decision of the High Court of Tanzania at Mbeya)

(Karua, J.)

dated the 19th day of February, 2013

in

Misc. Civil Application No. 27 of 2011

RULING

21st & 23rd October, 2014

KILEO, J.A.:

The amended Notice of Motion lodged by Mr. Justinian Mushokorwa, learned advocate on behalf of the applicant is couched in the following terms:

***"AMENDED NOTICE OF MOTION (per order dated
5/5/2014)***

***(Under Section 4(3) of the Appellate Jurisdiction Act, Cap
141 R.E. and Rules, 10; 28; 60(1); 49(1); of the Court of
Appeal Rules, 2009)***

TAKE NOTICE that onday of..... 2014 at 9.00
O'clock in the morning or as soon thereafter as he can be heard

Mr. J. Mushokorwa, Advocate for the above named Applicant will move a Judge of the court for an order that:

1. Extension of time be granted to lodge application for revision of the proceedings of the High Court in **Misc. Civil Application No. 27 of 2011** and **Misc. Civil Appeal No. 2 of 2009** and Mbeya District Court **Misc. Application No. 38A of 1999**.

On ground that:

- (a) The delay to file notice of appeal was due to waiting to be supplied copy of proceedings, ruling and drawn order informally applied for from the District Registrar on 20/2/2013.
- (b) Those documents are necessary to form opinion on the extent/scope of the notice of appeal.
- (c) Inability to raise fees to engage counsel for the intricate and costly job to prepare the CAT papers.
- (d) The proceedings and decisions of the court below are perverse at law.

And for an order that the costs of and incidental to this application abide the results of the said appeal."

I found it befitting to reproduce the whole contents of the Notice of Motion because of the nature of the application before me.

Mr. Mushokorwa represented the applicant at the hearing of the application while Mr. Mika Mbise, learned advocate appeared for the respondent. The Notice of Motion was accompanied by an affidavit sworn

by the applicant Martha Khotwe and that of his learned counsel. Mr. Mushokorwa had also filed a written submission which he asked the Court to adopt. On the basis of the Notice of Motion and the accompanying affidavit of the applicant, particularly paragraph 11, Mr. Mushokorwa argued that good cause had been established for the extension of time to lodge the application for revision. He therefore asked the Court to grant the application and extend the time.

Mr. Mbise on the other hand very strongly resisted the application which he said was very confusing and difficult to decipher what it is intended to ask the Court to do in view of the papers that were filed. The learned counsel pointed out that whereas at the heading of the Notice of Motion it specifically indicates that the intended revision is for the Court of Appeal to revise the decision of Karua, J. dated 19/2/2013 in Misc. Civil Application No. 27 of 2011, in the body of the Notice of Motion two more matters are included which are intended to apply for revision. The learned advocate submitted that one of the matters mentioned is a matter in the District Court which this Court, in terms of section 4 (3) of the Appellate Jurisdiction Act, Cap 141 R. E. 2002 has no mandate to revise

Mr. Mbise submitted that the application suffers from yet another discrepancy in that the grounds stated do not support the application. The grounds for delay in the Notice of Motion make reference to a delay in filing Notice of Appeal while the matter before the Court is an application for extension of time to lodge an application for revision. That is not all, Mr. Mbise argued, there were no annexures to the Amended Notice of Motion while reference was made to some annexures.

By way of rejoinder, Mr. Mushokorwa submitted that though the mentioning of the matter in the District Court in the Notice of Motion was superfluous there was no serious effect. As for the other anomalies, the learned counsel urged the Court to ignore any shortcomings and look at the application as a whole. He believed that good cause had been shown for the grant of the application.

The matter need not detain me. I will address myself first to the grounds of appeal listed in the Notice of Motion. Rule 48 (1) of the Court of Appeal Rules, 2009 which provides the form in which an application such as the one before the Court is to be made states:

"48-(1) Subject to the provisions of sub-rule (3) and to any other rule allowing informal application, every application to the Court shall be by notice of motion

supported by affidavit. It shall cite the specific rule under which it is brought and state the ground for the relief sought."

In the Notice of Motion as reproduced above the grounds given for the delay in filing the application for revision are:

"(a) The delay to file notice of appeal was due to waiting to be supplied copy of proceedings, ruling and drawn order informally applied for from the District Registrar on 20/2/2013.

(b) Those documents are necessary to form opinion on the extent/scope of the notice of appeal.

Paragraph 11 of the applicant's amended affidavit in support of the Notice of the Motion which is an actually a mix-up states:

"The reasons for delay to file and (sic) application for revision are:

(a) The waiting for court proceedings, ruling and drawn order requested for per informal notice of appeal dated 20/2/2013 (part of Annexure J) which were necessary to determine the scope of the notice of appeal and which were supplied by the registry on 30/5/2013.

(b)

There is no gainsaying, as rightly submitted by Mr. Mbise, that the grounds stated in the Notice of Motion have nothing to do with the cause for the delay in filing the application for revision. If anything the grounds stated in the Notice of Motion for the delay are in regard to filing a Notice of Appeal.

The matter currently before the Court is an application for extension of time to file an application for revision.

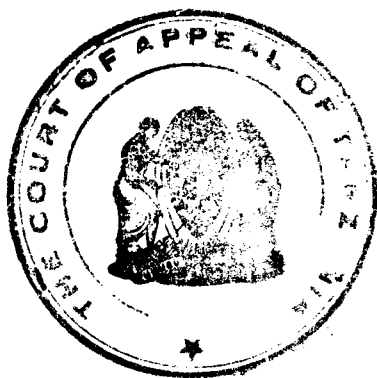
Mr. Mushokorwa asked me to ignore the shortcomings and look at the application as a whole as good cause has been shown, that the delay was due to the fact that they had not been supplied with papers in time. With due respect to the learned counsel, his argument is not sustainable. He did not cite to me any provisions of the law under which I could ignore the shortcomings and continue to grant the extension of time sought.

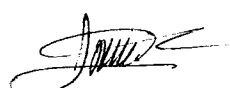
Indeed, I entirely agree with Mr. Mbise that the application is so confusing and a misconception that it cannot stand. In the circumstances, without having the necessity of discussing the other points raised by Mr. Mbise, I strike out the misconceived application with costs to the respondent.

DATED at **MBEYA** this 21st Day of October 2014.

E. A. KILEO
JUSTICE OF APPEAL

I certify that this is a true copy of the original.




P. W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL