

IN THE COURT OF APPEAL OF TANZANIA

AT ARUSHA

CIVIL APPLLCATION NO. 394/02 OF 2020

SIRILI BAHAMMO.....APPLLCANT

VERSUS

ANDREA YAKOBORESPONDENT

**(Application for extension of time within which to file a Notice of
Appeal in order to challenge the Decision of the High Court of
Tanzania at Arusha)**

(Nyerere, J.)

dated the 17th day of October, 2012

in

Miscellaneous Land Appeal No. 8 of 2011

.....

RULING

5th & 8th December 2022

GALEBA, J.A.:

This is an application for extension of time within which to file a notice of appeal. The underlying notice of motion is presented under rule 45A (1) (a) and 48 (1) and (2) of the Tanzania Court of Appeal Rules 2009, (the Rules), and is supported by the affidavit of Sirili Baha Ammo, the applicant. As it were, the applicant lost in favour of the respondent, Andrea Yakobo before the High Court of Tanzania sitting at Arusha, Nyerere J. It was in Miscellaneous Land

Appeal No. 8 of 2011. The decision which had been passed by the District Land and Housing Tribunal for Manyara (the DLHT) in Land Appeal No. 140 of 2009, in favour of the applicant, was nullified with costs, by the order of the High Court, that the applicant is now seeking to challenge. The decision of the High Court is dated 17th October 2012.

That decision was duly challenged by lodging a notice of appeal a day next following its pronouncement, that is on 18th October 2012 and later Civil Appeal No. 135/02 of 2016, was filed. However, because that appeal was filed out of time, it was struck out with costs by this Court on 8th October 2018. The order terminating that appeal, also put to rest the notice of appeal that had been filed earlier on.

The applicant then approached the High Court to apply for extension of time to file a notice of appeal. In that respect, he filed Miscellaneous Land Application No. 124 of 2018. However, that application was dismissed with costs by the High Court, Mzuna, J., on account that, the applicant failed to explain the entire period of

delay. It is based on this refusal by the High Court, that the applicant has approached this Court on a second bite, as indicated above, under rule 45A (1) (a) of the Rules, and of course, rule 10 of the Rules, notwithstanding that the latter rule is not cited in the notice of motion.

Although the respondent was served with the notice of motion and the affidavit sometime in the year 2020, no affidavit in reply was filed under rule 56 (1) of the Rules to counter the factual allegations of the applicant.

When this application was called on for hearing on 5th December 2022, the applicant was represented by Mr. Bharat B. Chadha, learned advocate and the respondent appeared in person.

At the outset, the respondent stated that he did not wish to contest the grant of the prayers sought in the application, if the matter was properly before the Court. In response to that concession, Mr. Chadha prayed that, as the respondent does not contest the application, then based on the affidavit and the written submissions on record, let the orders prayed be granted. He also

made a brief oral submission in stressing that the application before the Court was based on the ground of illegality in the judgment of the High Court sought to be challenged. In elaborating his point, he submitted that the High Court erred to have made a finding that the appeal before the DLHT was filed out of time without any extension sought and obtained. He referred me to page 17 of the record of the application where there is a ruling in Miscellaneous Civil Application No. 37 of 2009 where the DLHT considered the applicant's application for extension of time to file appeal and granted fourteen days to lodge the appeal, which the applicant did. Mr. Chadha strongly submitted that, had the High Court called for the record of the DLHT, it would not have nullified the decision of that tribunal on account that the appeal before it was filed out of time without extension.

I have reviewed the notice of motion, the affidavit of the applicant, the written submissions filed and all documents in this matter, including the judgement of the High Court sought to be challenged, should this application be granted. I have also reviewed

the drawn order dated 10th September 2009 granting fourteen days extension to file appeal in the DLHT.

In my view, determination of this application presents no difficulty because; **first**, it is a settled position of this Court that when illegality as a ground of extension of time is established, court have a discretion to grant the order sought, see **Lyamuya Construction Co. Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) and the **Permanent Secretary, Ministry of Defense and National Service v. Devram Valambhia** [1992] T.L.R. 182.

Two, I am inclined to agree with Mr. Chadha, that although the applicant had applied for extension of time to file the appeal to the DLHT and such extension was granted, in refusing to entertain that argument at page 14 of the record of this application, the High Court stated that:

"Fairly, since the issue of limitation was raised in the Petition of Appeal and later argued in the appeal, wisely; it wouldn't and cannot suffice for

one to assert that the contentious leave to file an appeal out of time was so sought and granted without proof. One cannot just take for granted that even if leave was really sought and granted, then it would be the duty of the Court to go and search for it in proof of such issues of fact, otherwise; it would amount into the Court treating that case as hers.”

In my view, having seen the drawn order granting extension of time to file an appeal in the DLHT, in the context of the above observation by the learned Judge of the High Court, I fully agree with Mr. Chadha that there is a point of illegality lingering somewhere in the Judgment of the High Court which at this level, I have no mandate to delve any deeper into it. Suffice however, to state that this application has merit.

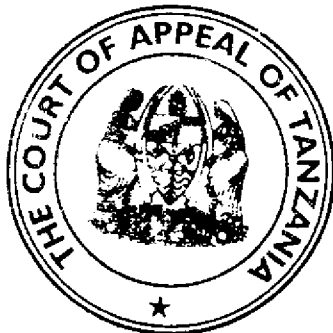
For the above reasons, under the provisions of rule 10 of the Rules, the order for extension of time to file a notice of appeal is hereby granted. The applicant is granted thirty (30) days from the date of delivery of this order, to file the requisite notice of appeal to challenge the decision of the High Court of Tanzania at Arusha in Miscellaneous Land Appeal No. 8 of 2011.

Considering the interests of justice in this matter, each party shall bear his own costs.

DATED at **ARUSHA**, this 7th day of December 2022.

Z. N. GALEBA
JUSTICE OF APPEAL

The ruling delivered this 8th day of December, 2022 in the presence of Mr. Sirili Baha Ammo, counsel for the applicant and Mr. Andrea Yakobo, the Respondent in person, is hereby certified as a true copy of the original.




G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL