

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

CRIMINAL APPLICATION NO. 21/2 OF 2023

GIDBAGHE LAYDA APPLICANT

VERSUS

EMANUEL BARIYE 1ST RESPONDENT

LAURENT TLUWAY 2ND RESPONDENT

WILBROAD MAGANGA 3RD RESPONDENT

**(Application for extension of time to file an application for leave to
appeal to the Court of Appeal as a second bite from the refused decision
of the High Court of Tanzania at Arusha)**

(Bade, J)

dated the 31st day of March, 2023

In

Misc. Criminal Application No. 64 of 2022

RULING

31st October, 2023

KITUSI, J.A.:

The course taken by the applicant in this matter has been dubbed as a second bite application for extension of time, permitted by rules 10, 45 (b), 48 (1) and 49 (2) of the Tanzania Court of Appeal Rules, 2009 (the Rules). This matter commenced as Criminal Case No. 577 of 2019 at Karatu Primary Court and subsequently reached the High Court as PC Criminal Appeal No. 21 of 2020 where the present applicant lost. He intended to appeal against that decision so he filed Misc. Criminal

Application No. 64 of 2022 seeking extension of time. He was unsuccessful, hence this second bite application.

The ruling refusing the first application was delivered on 31/3/2023. Aware of the requirement under rule 45 (b) of the Rules for a second bite application to be filed within 14 days of the refusal, it became imperative to address the issue whether this application has been filed within time.

The applicant prosecuted the application in person. He explained why he did not beat the time line by citing the late supply of copy of judgment, the inability to get a lawyer due to financial constraint and the fact that he could not easily leave his work station to process this application.

The first respondent had nothing to say, while the second respondent briefly submitted that the applicant ought to have demonstrated his seriousness by acting within time. The third respondent did not enter appearance although he was duly served on 23/10/2023. Hearing proceeded in his absence in terms of rule 63 (2) of the Rules.

With respect to the applicant, the reasons for the delay in lodging this application do not feature in the supporting affidavit. Rather, the

affidavit accounts for the delay prior to the filing of these proceedings having been caused by delay in availing the applicant with a copy of judgment and proceedings in PC Criminal Appeal No. 21 of 2020. The latter has nothing to do with the failure on the applicant to file this application within 14 days from 31/3/2023.

If the applicant's delay was not of his own making, and caused by failure on the part of the Registrar to give him requisite documents, relevant to the instant application, such averment ought to have featured in the supporting affidavit. Besides, the applicant had a recourse to seek for the Registrar's certificate of delay as per rule 45A (2) of the Rule.

That rule provides:-

"(2) In computing the time within which to lodge an application under this rule, there shall be excluded such time as may be certified by the Registrar of the High Court as having been required for preparation of a copy of the decision or order".

For non compliance with rules 45 (b) requiring a second bite application to be filed within 14 days of the refusal, and rule 45A (2) requiring a party to obtain a certificate of delay if the delay is caused

by the Registrar, this application is time barred. Consequently I strike it out.

It is so ordered.

DATED at **ARUSHA** this 31st day of October, 2023.

I. P. KITUSI
JUSTICE OF APPEAL

The Ruling delivered on this 31st day of October, 2023 in the presence of the applicant in person, unrepresented and first and second respondents in person, third respondent absent, is hereby certified as a true copy of the original.



B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL