IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA SUB-REGISTRY)
AT MWANZA
MISC. CIVIL APPLICATION NO. 18 OF 2022

(Originating from (HC) Civil Revision No. 24 of 2018 in the High Court of Tanzania at Mwanza)

DIRECTOR OF EDUCATION DEPARTMENT
OF ARCHDIOCESE OF MWANZA.....APPLICANT
VERSUS
MONICA S/O MAKUNGU.....RESPONDENT

R U L I N G

26th May & 9th August, 2022

DYANSOBERA, J.:

The applicant the Director of Education Department, Archdiocese of Mwanza has filed a Chamber Summons under Sections 11 (1) and 5 (1) (c) of the Appellate Jurisdiction Act [Cap. 141 R.E. 2019] for the following orders:

(a) The applicant may be granted extension of time to file and serve to the respondent notice of intention to appeal, for making an application for certified copies of the proceedings, judgment and decree and serve the same to the Respondent as well as to make an application for leave to appeal to the Court of Appeal of Tanzania,

(b) The costs of this Application be provided for

(c)Any other orders this Honourable Court may deem fit to grant.

The application has been supported by an affidavit of Renatus Malimo Nzungu, Principal Officer of the Applicant.

The timeline of events giving rise to this application is this. The applicant employed the respondent on 1st September, 1999 as an Accountant and posted her at Murutunguru Secondary School. On 21st July, 2005, the applicant terminated the respondent's services. The respondent was aggrieved and referred the matter to the Conciliation Board. In its decision dated 14th day of February, 2007, the Board ordered the respondent's reinstatement with payment of arrears of wages from the date of termination. Dissatisfied with the decision of the Board, the applicant referred the matter to the Minister responsible for labour matters, contesting the decision of the Conciliation Board. The Minister, on 8th August, 2007, confirmed the decision of the Conciliation Board ordering the respondent's reinstatement to her employment with payment of arrears of wages.

The respondent then, on 12th day of November, 2007, embarked on executing the order and instituted the execution proceedings before the Court of a Resident Magistrate at Mwanza vide Miscellaneous Employment Civil Application No. 121 of 2007. The applicant, however, instituted a stay of the

execution application on 3rd December, 2007 by filing Miscellaneous Civil Application No. 128 of 2007 before the Court of the Resident Magistrate to wait for the High Court's decision in the application for prerogative orders against the decision of the Minister. On 18th March, 2008 the application for stay of execution was granted. Meanwhile, the High Court decision dismissing the applicant's application with costs and affirming the decision of the Minister was handed down on 31st August, 2017.

Following that, the respondent on 12th day of March, 2018, revived her application for execution, including the filing of the execution forms. The same was served upon the applicant on 6th April, 2018. The service prompted the applicant to file a notice of preliminary objections on the jurisdiction of the Court of the Resident Magistrate to entertain the application for execution and on the competence of the application. The preliminary objection was sustained and the application was struck out on 21st August, 2018. The respondent thought that the striking out of her application robbed her of justice and on 23rd day of November, 2018 preferred revisional proceedings before this Court vide High Court Civil Revision No. 24 of 2018.

In its decision dated 29th day of May, 2020, this court nullified the proceedings and decision of the Court of the Resident Magistrate in

Miscellaneous Application No. 25 of 2018 and remitted the matter back to the Court of the Resident Magistrate, Mwanza for finalization of the execution of the decision of the Minister of Labour.

The applicant was not satisfied with the decision of this court and 5th June, 2020 she lodged a Notice of Appeal to the Court of Appeal of Tanzania and on 10th June, 2020, the applicant filed before this court an application for leave to appeal to the Court of Appeal and the leave was granted on 8th December, 2020.

After waiting for almost eight months and nothing was done about the intended appeal, the respondent instituted an application before the Court of Appeal seeking to strike out the Notice of Appeal filed by the applicant on 5th June, 2020 challenging the decision of this court in Civil Revision No. 24 of 2018.

The Court of Appeal heard the respondent's application and, at the end, granted the application and struck out the notice of appeal lodged by the applicant. The decision of the Court of Appeal was handed down on 21st February, 2022.

Unflinchingly, the applicant has come to this court praying for the orders set out as indicated above.

At the time of hearing of this application, Mr. Anthony Nasimire, learned Advocate, represented the applicant, in the time, Monica Makungu, the respondent, stood on her own. The hearing of this application was argued by way of written submissions.

Arguing in support of the application, Mr. Nasimire submitted that this omnibus application is seeking, inter alia, extension of time to lodge notice of appeal, extension of time to make application for copies of proceedings, judgment and decree, extension of time to serve notice of appeal, extension of time to make an application for leave to appeal to the Court of appeal and leave to appeal to the Court of Appeal. He contended that granting an application of this nature is an issue of the discretion of the court which is judiciously exercised after the consideration with intent to prove whether the applicant has shown good cause. It is his view that what amounts to good cause depends on various factors as there is no hard and fast rule but each case depends on its peculiar circumstances.

As to the grounds for the application, Mr. Nasimire mentioned illegality of the decision being challenged and technical delay. He explained that paragraph 5 of the affidavit bears the illegality that are raised by the applicant

In the Written Reply by the respondent, it is argued on part of the respondent that the application is incompetent, unmeritorious and misconceived and that the advocate has been too economical with the truth. The respondent argued that the citing of Section 5 (1) of the Appellate Jurisdiction Act has been misplaced as the said provision can only be invoked in applications for leave to appeal to the Court of Appeal. She elaborated that the purported application for leave to appeal at this stage is totally misconceived partly because no prayer for leave to appeal in the chamber summons. The applicant cannot be allowed to pursue an application not indicated in the chamber summons and party because there is no valid notice of appeal on record yet as required under rule 46 (1) of the Court of Appeal Rules, 2019.

With regard to section 11 (1) of the said Act, the respondent argued that the section only gives the High Court jurisdiction to make extension of time for doing the following acts: giving notice of intention to appeal, making an application for leave to appeal and making an application for certificate on

and which are sought to be cured by the Court of Appeal. It is his argument that once a point of illegality is raised it forms solid cause that calls for the extension of time.

point of law but do not give jurisdiction to the High Court to make extension of time for doing the three acts, namely, (b) (c) and (d), respectively, serving the notice of intention to appeal to the respondent, making an application for certified copies of proceedings, judgment and decree and serving the certified copies of the proceedings, judgment and decree to the respondent.

Further that the chamber summons does not indicate any decision or order intended to be appealed against.

After the respondent detailed the historical background of the matter, she told this court that no good reasons have been shown to warrant the court grant the orders the applicant is seeking as the relevant factors were not met. The respondent also contends that there was negligence and inaction on part of the applicant. It is her further contention on the degree of prejudice that the applicant is just playing delaying tactics to delay her from realizing her rights which have been in abeyance for almost fifteen (15) years now.

Continuing to submit, the respondent told this court that to constitute a good cause for granting extension of time on the ground of illegality, it must be clearly demonstrated in the chamber summons and affidavit and the alleged illegality must be a apparent on the face of the record. The respondent

concluded that there has been inordinate delay in bringing this application without satisfactory explanation.

The law relating to time limit provide a time table for the conduct of litigation so that the very purpose of judicial process is not defeated. The burden lies on the party seeking favourable exercise of court's discretionary powers to place some material before the court upon which such discretion may be exercised.

In applications like the present one, the applicant must give adequate grounds not only to explain the delay but also to justify an order for extending time.

On the merits or other wise of the application, the applicant, under paragraphs 5 & 8 of his affidavit, averred that he is intending to pursue an illegal execution not sanctioned by the Minister on the grounds stated under paragraph 5 of the affidavit. As far as this argument is concerned, it should be observed that the illegalities should be on the face of record and not to require a long-drawn process to decipher from the impugned decision the alleged illegalities.

In the light of that observation, the applicant did not specifically point the illegality which featured in the ruling of the Tribunal which should be on the face of record. This is contrary to what the Court of Appeal stated in the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 where it made the following observations: -

> "Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in VALAMBIA'S case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. The Court there emphasised that such point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process. "

To that end, I must conclude that the applicant has not demonstrated any good cause that would entitle him extension of time.

Second, as it is apparent from the Chamber Summons, this application has been filed under Sections 11 (1) and 5 (1) (c) of the Appellate Jurisdiction Act, [Cap, 141 RE. 2019] which provides as hereunder:-

> "Subject to subsection (2), the High Court and, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case to appeal, notwithstanding that the time for giving the notice or making the application has already expired "

The Chamber Summons is clear that the two applications were combined. It is my considered opinion that the procedure to combine the two is not proper. **The application for extension of time to file notice of appeal should come first as the prior existence of the notice of appeal duly lodged is the condition precedent for lodging an application for leave or a certificate on a point of law.** So, if a notice of appeal is required to be filed first as is provided for under Rules 83(4) and 46 (1) of the Court of Appeal Rules 2019 before filing leave or certificate, it is my considered view that even the application for extension of time to file

notice of appeal out of time ought to take precedent over the granting of leave and any matter incidental to the filing of leave. The two should not be filed simultaneously.

Rules 46 (1) reads: -

> 46(1) Where an application for a certificate or for leave is necessary it shall be made after the notice of appeal is lodged.

While Rule 83(4) of the Rules provides that: -

> 83 (4) When an appeal lies only with leave or on a certificate that a point of law is involved, it shall not be necessary to obtain the leave or the certificate before lodging the notice of appeal.

In such circumstances, the combination of the two applications is misconceived.

Third, the present application, apart from being devoid in merit, is a demonstrative of a misconduct exhibited by the applicant which is tantamount to blatant abuse of court process as it is improper use of judicial process as well as an interference with the due administration of justice. This Court in the case of **Starpeco Ltd and others v. Azania Bank Ltd and another**, Misc. Commercial Application No. 11 of 2020 reported in [2020] TZHCOMD 2077 (10th February, 2020) at p. 30, first paragraph made the following pertinent observation on the concept of abuse of court process: -

'The concept of abuse of court process has a common feature, which is an improper use of the judicial process by a party in litigation to interference with the due administration of justice. Such interference includes but is not limited to a situation where a party deliberately files a multiplicity of suits in court'.

Such a situation obtains in the present application whereby the applicant has been filing hopeless applications and ultimately an appeal to the Court of Appeal and failed to pursue it. This court abhors the appellants' conduct and as it is intended to lead to an endless litigation after the case between the parties has been determined to its finality.

The applicant is reminded to heed and adhere to the wisdom elucidated by the Court of Appeal in the case of **Stephene Masato Wasira v. Joseph Sinde Warioba and the Attorney General** [1999] 332 at p. 342 that: -

'The law of this country, like laws of other civilized nations recognizes like life, litigation has to come to an end. Those who believe that litigation may continue as long as legal ingenuity has not been exhausted are clearly wrong'.

Fourth, there is every reason to believe that the applicant is deliberately seeking to evade or obstruct the cause of justice. The Court of Appeal in the case of **Omary Shaban Nyambu v. Dodoma Water and Sewerage**

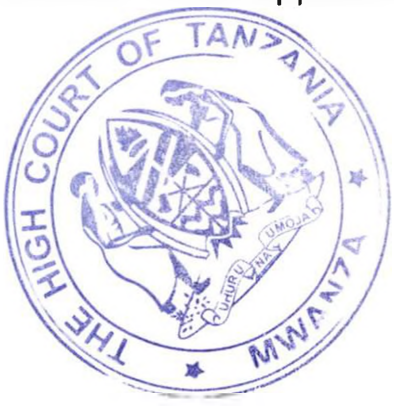
Authority, Civil Appeal No. 146 of 2016 (unreported) observed, *inter alia,* that the discretion of the court must aim at avoiding injustice or hardships resulting from accidental inadvertence or excusable mistake or error but should not be designed at assisting a person who may have deliberately sought to it in order to evade or otherwise to obstruct the cause of justice.

In the result, this application fails and is, accordingly, dismissed.

It is so ordered.

W.P. Dyansobera
Judge
9.8.2022

This ruling is delivered at Mwanza under my hand and the seal of this Court on this 9th day of August, 2022 in the presence of the respondent but in the absence of the applicant.



W.P. Dyansobera
Judge