

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CIVIL APPLICATION NO. 20 OF 2021

*(Arising from the decision of the Juvenile Court of Arusha at Arusha, Misc.
Application No. 41 of 2020)*

BEATRICE BARTAZAR PREMSINGH..... APPLICANT

VERSUS

PETER GABRIEL MSOFFE..... RESPONDENT

RULING

18th July & 26th August, 2022

TIGANGA, J.

This is an application for enlargement of time to file an appeal out of time. The applicant being aggrieved by the decision and drawn order of the Juvenile Court of Arusha at Arusha sought to appeal to this court. Unfortunately, she found herself webbed within the bar of time limit. As a matter of law and procedure, she stepped into this court looking for the bar being uplifted and let her inter the justice square.

The application is brought under Sections 14(1) and 19(2) both of the Law of Limitation Act, [Cap. 89 R.E 2019]. Under the chamber summons and an affidavit duly sworn by the applicant, Beatrice

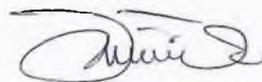


Baltazary Premsingh the grounds for extension of time to file the appeal out of time are hinged on the following to wit:

That the applicant was delayed by the trial court from being issued with the Ruling and Drawn Order delivered by the court on 24th November, 2020 despite various efforts to seek for the same in vain. This is in accordance with paragraphs 2, 3 and 4 of the applicant's affidavit. Another ground for this application is on illegality of the impugned Ruling. That, due to the fact that, the child whose custody was given to the respondent is an infant of 5 years old of age the custody should be given to the applicant, her mother and the presumption was not rebutted. This is pursuant to paragraph 3 of the same applicant's affidavit.

Upon the application being served to the respondent, he, through his counter affidavit duly sworn by himself, counteracted all grounds as being meritless.

With the order of the court weighing the parties' prayer, the matter was argued by way of written submission. Mr. Wilbard John Massawe, Learned Advocate of Mawala Advocates represented the Applicant whereas Mr. Alute S. Mughwai, Senior Learned Advocate of Mughwai & Co. advocates appeared for the respondent.

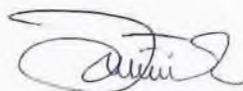


Before I venture into the merit of the application, I think it apt to discuss the competence of this application before the court as it was shortly during opening remarks introduced by Mr. Mughwai.

At the very first page of the reply submission, para 2, Mr. Mughwai intimated that, the applicant has brought the application under the provisions of Section 14(1) and 19(2) of the Law of Limitation Act, Cap. 89 R.E 2019] while the relevant provision is Section 130(2) of the Law of the Child Act, No. 21 of 2009. He therefore, opposed the application.

During rejoinder time, Mr. Masawe did not say anything about this contention by Mr. Mughwai. I will say a word on it. I am at such settled view because it is the gateway towards holding on the two grounds raised by the applicant. It is the duty of every court to satisfy at the outset as to whether the matter brought before it is within its boundaries to adjudicate. It is a jurisdictional issue. That said, the issue is whether this application is competent before me. Section 130(2) of the Law of the Child (supra) provides:

130.-(1) Every appeal against an order or sentence made or passed by a Juvenile Court under the provisions of this Act shall be entered within fourteen days from the date of the order or sentence appealed against.

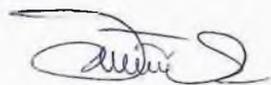
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(2) The High Court may for good cause admit an appeal out of time. (Emphasis added).

Reading that provision of the law, it is crystal clear that, the one seeking for extension of time to file the appeal out of time in juvenile matters must move the court under section 130(2) of the Law of the Child, the law being specific one on issues of children. Authorities for this effect are plethora. Among them is the case of **Nicholaus Hamis & 1013 Others versus Tanzania Shoe Co. Ltd and Another**, Civil Application No. 5 of 2004 where the court of Appeal of Tanzania held that:

"It is well settled law that citing a wrong provision of the law or rule under which an application is made renders the application incompetent as the court will not have been properly moved".

I am aware of the overriding objectives principle introduced in our jurisdiction which enjoins the courts to do away with technicalities and instead, should determine cases justly. However, this principle of overriding objective is not applicable in each and every case, it depends on the nature and extent of the violation of laws, procedure and prejudice might be incurred by either party. This issue was once

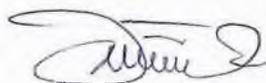


determined by the Court of Appeal of Tanzania in the case of **Mondorosi Village Council and 2 Others versus Tanzania Breweries Ltd and 4 Others**, Land Appeal No. 26 of 2013 where it was held:

Regarding the overriding objective principle, we are of the considered view that, the same cannot be applied blindly against the mandatory provisions of the procedural law which go to the very foundation of the case. This can be gleaned from the objects and reasons of introducing the principle under section 3 of the Appellate Jurisdiction Act [CAP 141 R.E. 2002] as amended by the Written Laws (Miscellaneous Amendments) (No. 3) Act No. 8 of 2018, which enjoins the courts to do away with technicalities and instead, should determine cases justly. According to the Bill to the amending Act, it was said thus;

See also the case of **Puma Energy Tanzania Limited versus Ruby Roadways (T) Limited**, Civil Appeal No. 3 of 2018.

In this matter under scrutiny, not only that the applicant cited wrong provision of the law but also cited the wrong law in regard to application of extension of time to file the appeal out of time. In the



result therefore, those grounds raised cannot be analyzed and determined whereby the application has been wrongly filed. It remains incompetent and its status is to suffer strike out.

In the result, this application is struck out for being incompetently filed. No order as to costs due to the nature of relationship of the parties.

It is accordingly ordered.

DATED at ARUSHA on 26th day of August 2022.



A handwritten signature in blue ink, appearing to read "J.C. Tiganga", is written over the printed name.

J.C. TIGANGA

JUDGE.