

IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

CIVIL APPLICATION NO. 423/08 OF 2021

EMMANUEL MAKAMBA APPLICANT

VERSUS

BODI YA WADHAMINI JIMBO KUU LA MWANZA RESPONDENT

**(Application from the Ruling of the High Court of Tanzania
at Mwanza)**

(Manyanda, J.)

dated 29th day of July, 2021

in

Misc. Land Application No. 117 of 2020

.....

RULING

6th & 8th December, 2022.

KITUSI, J.A.:

This second bite application seeking extension of time to apply for a certificate on a point of law is being resisted. The essence is a land matter that commenced at the Ward Tribunal of Buzuruga all the way to the High Court where the applicant lost. He lodged a notice of appeal to the Court, and there is no dispute that it was within time.

Aware that the intended appeal could only be pursued upon obtaining a certificate on a point of law, the applicant applied to the

High Court for the same but it was dismissed for being time barred. He then applied for extension of time so as to apply for that certificate out of time but that application was dismissed, hence this application.

It is common ground that where an application is refused by the High Court as it was the case with the instant, he may within 14 days invoke rule 45 A (1) (c) of the Tanzania Court of Appeal Rules, 2009 (the Rules) to make the same application to the Court. This application has been made within 14 days of the refusal, under rule 10 and 45 A (1) (c) of the Rules.

The applicant's account cited in paragraph 5 of the supporting as well as in the written submissions is that he could not timely apply for the certificate because he was supplied with the necessary documents when he was already barred by time. Paragraph 3 of the affidavit in reply does not dispute paragraphs 1, 2, 3, 4 and 5 of the affidavit.

However, in the respondent's written submissions he has raised two points worth consideration. The first, and this relates to the applicant's averment under paragraph 5 of the affidavit, is that the judgment of the High Court which was allegedly supplied to the

applicant belatedly, was not essential in lodging the application for a certificate on point of law.

At the hearing Mr. Mathias Mashauri, learned advocate for the applicant insisted that it was necessary for the applicant to read the judgment before proposing points of law, for determination by the court.

I agree with Mr. Mashauri on this point, because his reasoning makes sense as being logical and it is legal requirement as rule 45A (3) of the Rules. With respect, I cannot sustain the argument by Mr. Innocent Kisigiro, learned advocate who represented the respondent.

The second point that was raised by the respondent was that the application before Manyanda, J. on first bite, should not have been filed after the application for certification on point of law had been dismissed by Ismail, J. He argued that the High Court was *functus officio*, Ismail, J having dismissed the application for a certificate on points of law. The applicant could only appeal against the dismissal by Ismail, J, he argued.

The applicant's counsel argued that the fact that he was pursuing the matter in court constitutes technical delay which has been known to be good cause for the delay. He cited the cases of **William Shija v.**

Fortunatus Masha [1997] T. L. R. 213 and **Yunus Seif Kaduguda v. Raza Seif Kaduguda and Another**, Miscellaneous Land Case Application No. 12 of 2020, (unreported).

My conclusion on this point is that the fact that the application before Ismail, J was time barred, would not bar the applicant applying for extension of time on ground of technical delay. It does not cease to be a technical delay merely for fact that the applicant wrongly pursued the same matter in court. In **CRDB Bank Plc v. Finn W. Petersen & Others** [2018] T.L.R. 91 the applicant had wrongly acted on an *obiter dictum* of a case and consequently delayed in applying for stay of execution. On subsequent application for extension of time, the Court treated the delay as being technical, despite the applicant wrongly acting on a were *obiter dictum*.

I take the same path and hold the delay which occurred when the applicant was pursuing other applications, to have been technical delay. The argument that the High Court was *functus officio* stands on weak ground in my view, and I reject it. After all, Mr. Kisigiro had toyed with

that argument but Manyanda, J. overruled it and there is no appeal by the respondent challenging that finding.

Consequently, I allow the application. The applicant is granted 30 days within which to apply for certificate on points of law.

Costs shall abide the outcome of the intended appeal.

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

I. P. KITUSI
JUSTICE OF APPEAL

The Ruling delivered this 08th day of December, 2022 in the absence of both parties, is hereby certified as a true copy of the original.


C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL