

IN THE COURT OF APPEAL OF TANZANIA

AT IRINGA

CIVIL APPLICATION NO. 402/13 OF 2022

JENIFA BARAKAEL LYIMO..... APPLICANT

VERSUS

CRDB BANK LIMITED 1ST RESPONDENT

KASSIMU MWALONGO 2ND RESPONDENT

**(Application for extension of time to file leave by way of a second bite
against the ruling of the High Court of Tanzania at Iringa)**

Dated the 16th day of September, 2020

(Kente, J.)

in

Misc. Land Application No. 20 of 2018

RULING

08 & 13th December, 2023

NGWEMBE, JA.:

The applicant, Jenifa Barakael Lyimo is in this Court seeking extension of time to file leave of the Court to lodge her appeal against the orders and ruling delivered by the High Court in Misc. Land Application No. 30 of 2015 and Misc. Land Application No. 50 of 2016. The first bite of leave to appeal was unsuccessful before the High Court in Misc. Land Application No. 20 of 2018, which was delivered by Kente J, (as he then was) on 16th September, 2020.

She unsuccessfully, tried to lodge another application for leave in this Court as a second bite, Civil Application No. 491/13 of 2020 which application was withdrawn under Rule 58 (3) of the Tanzania Court of Appeal Rule, 2009 as amended (the Rules) on 7th November, 2022.

The appellant's quest to challenge the aforesaid impugned decisions never stopped, now is in this Court pressing for extension of time to file an application for leave as a second bite under Rule 10, 48 (1) (2) and 49 (1) of the Rules. Even in this application, it is encumbered by two grounds of preliminary objections namely:

1. *That, in terms of the section 11 (1) of the Appellate Jurisdiction Act Cap 141 R.E. 2019, Rule 47, 45A of the Court of Appeal Rules, 2009 as amended the application is defective for want of jurisdiction of the Court; and*
2. *That in terms of the Court of Appeal Rules the decisions and practice of the Court of Appeal, the application is defective for being filed in the Court of Appeal before the same is lodged and entertained by the High Court.*

Following the underlying principle, that the preliminary objection has to be determined prior to the hearing of the application on merit, then on the hearing date, the respondent (objector), enjoyed the legal services of Mr. Jonson Kagirwa and Ms. Neema Chacha, both learned advocates, while the applicant was represented by Mr. Rutebuka Samson Anthony, also

learned counsel. At the outset, Mr. Kagirwa prayed to argue the two grounds of objections jointly, which prayer was granted.

To begin with, Mr. Kagirwa argued generally that, this application for extension of time was never sought in the High Court contrary to section 11 (1) of The Appellate Jurisdiction Act Cap 141 R.E. 2019 (AJA), which section vest concurrent jurisdiction to extend time to the High Court and this Court. Under Rule 47 of the Rules, it is mandatory that such application must first be sought to the High Court as a first bite. Upon refusal by the High Court, then the applicant may venture to this Court as a second bite. However, the applicant failed to comply with that procedural rule laid down in Rule 45A. He insisted that, this application is incompetent because the applicant escaped the first bite contrary to Rule 45A (1) (b) of the Rules. Henceforth, he rested by a prayer that this application be struck out with costs.

In reply, Mr. Rutebuka, responded that, the center of this application is for extension of time made under Rule 10 of the Rules, which confers jurisdiction to this Court. Proceeded to elaborate that, the extension of time is intended to file leave to this Court as a second bite. This because the High Court, refused leave to the applicant to appeal to this Court.

In alternative, he urged this Court if is satisfied that the application is incompetent, same may be strike out so as to allow the applicant to venture into another right course.

In rejoinder Mr. Kagirwa was firm that, what is before the Court is an application for extension of time as opposed to the application for leave. Since the applicant never sought it to the High Court, then the application is incompetent and same should be strike out.

Having heard both parties, I find the issue for determination in a combined two grounds of objections is whether the application is competent in this Court. Uncontested by the applicant, this is an application for extension of time made under Rule 10 of the Rules. The Court has concurrent jurisdiction with the High Court on the powers to extend time limitation. In case the High Court refuses to extend time, the applicant has a second chance under Rule 45A of the Rules to file same in this Court as a second bite within 14 days from the date of the ruling of the High Court.

However, the concurrent jurisdiction of the High Court and the Court is guided by Rule 47 of the Rules. For its importance, the Rule is quoted:

*"Whenever the application is made either to the Court or to the High Court, **it shall in the first instance be made to the High Court or tribunal** as the case may be ..."*

Admittedly, the applicant did not seek extension of time before the High Court as a first bite, rather preferred this application for extension of time in this Court. Therefore, this application contravenes Rule 47 of the Rules. I therefore, accede to the respondents' objection that this application is premature, hence incompetent. The consequence of any incompetent application is to strike it out so as to allow the applicant to find the right cause of action.

For the reasons so stated, this application is premature, hence I proceed to strike it out with no order as to costs.

It is so ordered,

DATED at IRINGA this 12th day of December, 2023

P. J. NGWEMBE

JUSTICE OF APPEAL

The Ruling delivered this 13th day of December, 2023 in the presence of Mr. Rutebuka Samson Anthony, learned counsel for the Applicant and Ms. Grolia Kess Mwandlema holding brief for Mr. Jovinson Kagirwa, and Ms. Neema Chacha, learned counsels for the 1st and 2nd Respondents respectively, is hereby certified as a true copy of the original.



[Signature]
R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL