

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

CIVIL APPLICATION NO. 642/06 OF 2021

ABDUL IBRAHIM APPLICANT

VERSUS

AYUBU MWALEMBA 1ST RESPONDENT

THE REGISTERED TRUSTEE OF BAKWATA 2ND RESPONDENT

(Application from the Ruling of the High Court of Tanzania at Mbeya)

(Karayemaha, J)

dated the 21st day of October, 2021

In

Misc. Land Application No. 61 of 2021

RULING

3rd & 5th October, 2022

RUMANYIKA, J.A.:

This is an application for extension of time within which the applicant to file an appeal against the decision of the High Court (Karayemaha, J.) dated 21.10.2021 in Misc. Land Application No. 61 of 2021. It is predicated under rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). It was supported by an affidavit of Abdul Ibrahim and opposed by affidavits in reply deposed by Ayubu Mwalemba and Mtawa Kapalata. The latter is the principal Officer of the 2nd respondent.

When the application was called on 03/10/2022 for hearing, the applicant appeared in person unrepresented, whereas Mr. Isaya Mwanri, learned counsel appeared for the respondents.

At the outset, I had to hear the parties on an incompetence based preliminary objection (the PO) which was formally filed on 12/09/2022 and now taken by Mr. Mwanri. He submitted; **one;** that the Court lacked jurisdiction as the application contravened the provisions of rule 45 (a) (b) of the Rules because, he argued, upon the dismissal of the applicant's application for leave to appeal for being time barred, the applicant should have appealed or gone back to the High Court for extension of time. **Two;** that the present application for extension of time contravened the provisions of Rule 45 (a) (1) (b) of the Rules. It is time barred and liable to be struck out. Because, he said, the impugned decision was delivered on 25/10/2021 and the applicant filed the present application on 17/11/2021 which is nine days far beyond the fourteen days prescribed by law.

The applicant adopted an affidavit supporting the application and contended that he filed that application timeously. That if anything, the delay, is not his fault. It was caused by the Deputy Registrar's inaction.

Prompted by the court on what action he took from when the impugned decision was delivered, contended that he complained in writing to the Judge Incharge who advised him administratively, to apply for review or appeal against the decision.

Having heard the parties on the preliminary objection, I reserved my ruling and proceeded to the hearing of the application on merit.

Quite unusually on the merit part of the application, the applicant made a paradigm u-turn. He no longer faulted the High Court Judge in dismissing his application for leave to appeal for being time barred.

Mr. Mwanri adopted the two affidavits in reply. He welcomed the applicant's admission that from its inception, the application which gave raise to the present application was time barred and for that reason was rightly dismissed. He further contended that, this application is liable to be dismissed.

As regards the preliminary objection, it is desirable to reproduce the provisions of rule 45 (a) and (b) of the rules under which Mr. Mwanri's preliminary objection was premised. It reads thus:

"45. In Civil matters:

(a) ... (not applicable)

(b) Where an appeal lies with the leave of the Court application for leave shall be made ... within fourteen days of the decision against which it is desired to appeal or where the application for leave to appeal has been made to the High Court and

refused within fourteen days of that refusal;”

With respect, the provisions of the Court Rules allegedly offended by the present application concern with applications for leave which is not the case before me. Nor is it a 2nd bite application.

As it was alluded to before, rightly so, this application has been preferred under rule 10 of the Rules which reads that:-

"10. The court may, upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or tribunal, for the doing of any act authorized or required by these Rules" (Emphasis added)

With great respect, the preliminary objection which concerns with time bar to the present application is misconceived. Frankly speaking, I did not understand if Mr. Mwanri meant it that, an application for extension of time to take an action in a court of law can be time barred. I think, if the court accedes to that learned counsel's noble contention and proposition, which I am not ready to accept, then, God forbid the clear provisions of rule 10 of the Rules would have been redundant and meaningless. It is a trite law that for an application for extension of time to succeed, the bottom line is good cause shown by the applicant and it is determined at the Court's discretion. There is no gain saying therefore,

of an application for extension of time has never ever been time barred. Similarly, the 2nd limb of the preliminary objection is devoid of merits and is overruled.

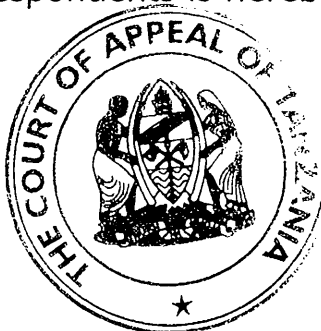
Now, I turn to the merit of the application. This needs not to take much of my time. The applicant having cut the long story short and made my task easier. Lately through, it sounds like the applicant withdrew the application quietly because he no longer queried the said dismissal order. In fact he conceded that his application for leave was time barred as held by the High Court.

The eventuality of it all has it that the application falls short of merit. I hereby strike it out with costs. Order accordingly.

DATED at **MBEYA** this 5th day of October, 2022.

S. M. RUMANYIKA
JUSTICE OF APPEAL

The Ruling delivered on this 5th day of October, 2022 in the presence of the applicant in person and Mr. Isaya Mwanri, learned advocate for the respondents is hereby certified as a true copy of the original.




R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL