

IN THE HIGH COURT OF TANZANIA  
(COMMERCIAL DIVISION)  
AT DAR ES SALAAM

**MISC COMMERCIAL CASE NO 112 OF 2017**  
(Arising from Commercial Case No 125 of 2014)

**BETWEEN**

LEONARD RUSUMBANYA GWANIJE -----APPLICANT

***VERSUS***

FIRST NATIONAL BANK TANZANIA LIMITED -----RESPONDENT

**RULING**

**SONGORO, J**

By a way of chamber summon, Leonard Rusumbanya Gwanije the Applicant filed an application for an order of extension of time to file a notice of appeal to the Court of Appeal.

The applicant application was made under Section 10 (1) of the Appellate Jurisdiction Act 1979 and 95 of the Civil Procedure Code Cap 33 [R,E 2002] and any enabling provision of the Law and supported by an affidavit sworn by Leonard Rusumbanya Ngwanije the applicant.

In response to the application, the First National Bank Tanzania Limited the Respondent bank filed Counter Affidavit sworn by Mr. Innocent Felix Mushi Learned Advocate.

Thus on 21/11/2017 when the application was called for hearing Leonard Rusumbanya the applicant appeared and pursue the application while

Mr. Priscas Richard, Learned Advocate appeared for the Respondent and opposed the application.

In pursuing his application, the applicant explained to the court that he has filed the instant application because the judgment of the court was delivered on the 16/12/2016 while he was absent and was notified on the date of judgment.

The applicant then explained that he followed for copies of Judgment and decree, and managed to secure them on 30/3/2017. So ultimately on the 27/4/2017, he filed the application seeking an extension of time to issue a notice of appeal.

It was the applicant argument that, he delay to issue a notice of appeal because he was not present when the judgment was delivered. So he prayed to the court to grant an extension of time to issue a notice of appeal to the Court of Appeal.

On his part, Mr. Priscas Richard for the respondent bank, opposed the application by stating that although the applicant claim he was absent when the judgment was delivered, but his record shows the judgment of the court was delivered on 26/11/2016 and applicant knew about the date of judgment.

The counsel then argued that, the issuance of Notice of Appeal does not even requires attachment of a copy of judgment or decree of the Court. So by 6/12/2016 when he knew about the Judgment, the applicant has about 6 days in his custody, but he failed to utilize them and issue a notice of appeal.

The respondent's counsel then contested that, the reasons advanced by the applicant are not sufficient enough to move and enable the court to issue an order of extension of time to issue a notice of appeal. So he prayed to the court to dismiss applicant application for lack of merit.

The court has considered the applicant application, and arguments from both sides and find the applicant application for an order of extension of time to issue Notice of Appeal to the Court of Appeal was made under Section 10(1) of the Appellate Jurisdiction Act, 1979.

Further the court perused Section 10 of the Appellate Jurisdiction Act 1979, and finds it only gives powers to the court to admit or postpone appellant bail. It is open that the present application is not "on bail or postponement of bail".

In other words it is crystal clear that, Section 10 of the Appellate Jurisdiction Act, 1979 is not relevant and enabling provisions of the law which may enable the court to make an order of extension of time to issue a notice of appeal. Instead the Court find the relevant and enabling provision of the law which may support an application for extension of time to issue a notice of appeal is Section 11(1) of the Appellate Jurisdiction Act Cap 141. In deed the marginal note Section 11(1) of the Appellate Jurisdiction states "Extension of time by High Court". Then the section states;-

*"Subject to subsection (2), the High Court or, 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 for appeal, notwithstanding that the time for giving the notice or making the application has already expired"*

So in the light of what is stipulated in the above cited Section 11(1) of the Appellate Jurisdiction Act, the court find and decided that the enabling provision of the law for the application of extension of time to issue notice of appeal to the Court of Appeal is Section 11(1) of the Appellate Jurisdiction Act Cap 141. So by citing Section 10(1) of the Appellate Jurisdiction Act in the Chamber Summon the applicant has cited a wrong provisions of law.

Courts in their decisions including decision in the cases of Abdul Aziz Suleman versus Nyaki Farmers' Co-operative Ltd and Another (1966) E.A 409, the East African Court of Appeal for East Africa observed and emphasized that, the applicant is required to cite the relevant provision from which the Court derives the power to hear and determine the application.

Similar legal position was stated in cases of Wilfred Lucas Tarimo and 30 Others Versus the Grand Alliance Limited , Civil Application No 22 of 2014, and Robert Leskar Versus Shibesh Abebe Civil Application No 4 of 2006 (Unreported)

Further courts in the above cited decisions have decided that, "If a party cites a wrong provision of the law the matter becomes incompetent as the Court will not have been properly moved. In other words courts non-citation of the relevant and enabling provisions of the law renders the application to be incompetent.

It follows therefore since the applicant did not cite Section 11(1) of the Appellate Jurisdiction Act Cap 141 which relevant and enabling provision in granting an extension of time, I find and decide the applicant application is

incompetent and hereby struck it out with costs in favour of the Respondent`s bank.

Dated and Delivered at Dar es Salaam this 28<sup>th</sup> day of February 2018



H.T.SONGORO  
JUDGE

The Ruling was delivered in the presence of Mr. Leonard Rusumbanya Gwanije the Applicant and Mr. Geoffrey Ngassa Learned Advocate of the Respondent`s bank.