

TANZANIA / JUDGMENT

felix lendita vs michael longidu

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IN THE COURT OF APPEAL OF TANZANIA AT ARUSHA CIVIL APPLICATION NO. 683 OF 2023
FELIX LENDITA..... APPLICANT VERSUS MICHAEL
LONGID'U.....RESPONDENT [Application for Extension of time
from the Judgment of the High Court of Tanzania at Arusha] fGwae. 3.^ Dated the 24th day of
February, 2020 in Misc. Land Application No. 154 of 2018

RULING

16th & 21st February, 2024 GALEBA. J.A.: This is an application for enlargement of time within which to file an application on a second bite to this Court. The first application to the High Court, Miscellaneous Land Application No. 154 of 2018, was struck out by Gwae, J on 24th February, 2020. The applicant did not file the application for a second bite to this Court within 14 days as required by rule 45A (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules). That why this application has been preferred. The application has been preferred under rule 45A (1) (a) and (c) of the Rules. However, upon being served with the record of the application, along with other documents the respondent lodged a notice of preliminary objection based on a point of law that this application is time barred. At the hearing on 16th February, 2024, as per the practice of courts in this jurisdiction, I had to start to dispose of the objection first before getting to the substantive application. Before me to argue the objection were Mr. Lengai Loita and Dr. Ronilick Mchami both learned advocates, appearing for the applicant and the respondent, respectively. Dr. Mchami was the first to submit because he was the one who raised the objection. He was brief. He submitted that an application in the nature of a second bite has to be filed within fourteen (14) days of the refusal by the High Court. He referred this Court to rule 45A (1) of the Rules to that effect. He contended that because the High Court refused the first application on 24th February, 2020, then this application ought to have been lodged in this Court latest on 9th March, 2020, which was the 14th day from Hon. Gwae, J's order. His point was that this application having been lodged on 6th September, 2023, the same was lodged over 3 years beyond the statutory time limit. Learned counsel implored me to strike out the application with costs. In reply, Mr. Loita conceded to the substance of the preliminary objection, namely that the applicant is out of time to file an application for a second bite and that is why he brought this application, to seek enlargement of time to lodge it. His point was that the preliminary objection

was misplaced. He also went ahead to explain why he was late to file the application for a second bite, which looked like he was arguing the substantive application for extension of time itself, a stage we have not yet reached. I have considered the submissions of both learned counsel, and in the main the learned advocates are both right. Dr. Mchami is right in submitting that an application for a second bite under rule 45A (1) of the Rules, ought to have been lodged within 14 days of Hon. Gwae J's decision which was delivered on 24th February

2020. However, learned senior counsel is wrong in assuming that this application is for a second bite under that Rule. The application before me, although erroneously brought under rule 45A (1), instead of rule 10 3 both of the Rules, it is not an application for a second bite which ought to have been filed within 14 days from the date of refusal by the High Court. In this application, the Notice of Motion states, in part that: "That this honourable Court be pleased to extend time for the applicant to file a Civil Application before this honourable Court as a second bite against the ruling in Miscellaneous Land Application No. 154 o f 2018 in the High Court o f the United Republic of Tanzania before Honourable Judge Gwae, which was delivered on 24/02/2020..." An application which must be filed in 14 days in terms of rule 45A

(1) is an application made on a second bite. In this case the applicant has not yet filed that application, he is only seeking enlargement of time to file it. In other words, the preliminary objection raised would only be properly placed had this application been an application for a second bite, which is not the case. In the circumstances, this application not being an application for asecond bite, the preliminary objection is misplaced and the same stands overruled. 4 In the meantime, this application is hereby adjourned to a future session of the Court as it may scheduled by the Registrar. As for costs, I make no order in that respect. It is so ordered. DATED at ARUSHA this 20th day of February, 2024. Z. N. GALEBA JUSTICE OF APPEAL The Ruling delivered this 21st day of February, 2024 in the presence of Mr. Lengai Loita, learned counsel for the Applicant and Mr. Dr. Mchami, learned counsel for the Respondent, is hereby certified as a true copy of the original. 5

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