

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB - REGISTRY OF SHINYANGA  
AT SHINYANGA**

**LAND APPLICATION NO. 39 OF 2023**

*(Originating from Shinyanga in Land Appeal No 83/2021 the same arise form Land Application No. 09/2020 before Maswa District Land and Housing Tribunal)*

**MINDI MHIWA..... APPLICANT**

**VERSUS**

**JINYAMA SULUBA ..... 1<sup>ST</sup> RESPONDENT**

**DILU SULUBA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

*15<sup>th</sup> December 2023 & 7<sup>th</sup> February 5, 2024.*

**F.H. MAHIMBALI, J**

The applicant being aggrieved by the decision of this Court via Land Appeal No.83/2021, filed Misc. Land application No.52/2022 for the leave to appeal to the Court of Appeal of Tanzania. The application was struck out for being time barred for a single day, hence this application for extension of time within which the applicant may file application for the leave to appeal to Court of Appeal of Tanzania out of time.

The respondent when countering to the application, raised preliminary objection on point of law that the instant application is bad in law claiming that this Court has not been properly moved as the application was initiated by the wrong provision of the law.

When the matter came for hearing, the applicant had legal representation of Mr. Masunga learned advocate while the respondent enjoyed legal service of Mr. Masige also learned advocate.

Arguing to the preliminary objection Mr. Masige contended that the preliminary objection is on a legal issue that the application has been preferred under a wrong provision as the court is not properly moved. The application for leave to appeal to the CAT on land matters is governed by the Land Dispute Courts Act and the Appellate Jurisdiction Act (AJA). Thus, it is a good practice and acceptable law that the law applicable is the AJA and Court of Appeal Rules of 2019. Adding that section 4 of the AJA is very clear on that. On that basis, the application has not met the legal requirement for its legality before the Court.

Mr. Masige in addition submitted that, in his opinion, the application was therefore supposed to be brought under S. 11(1) of AJA as specific law governing the preliminaries to the CAT. Since the jurisdiction of this court is by statute, it obtains its powers from the specific statutes conferring such legal mandates and not otherwise.

Though the law of Limitation Act does not apply to CAT, the wording under Section 14 of the Law of Limitation Act neither does not give a legal room for this court to entertain such an application as per law. Therefore,

citing a wrong law in such an application, makes this application incompetent before the court of law.

To buff his argument, he referred this Court to the decisions in the case of **Almas Iddi Mwinyi vs National Bank of Commerce (NBC) and Mrs Ngeme Mbita**, (2001) TLR 83. That a wrong citation of the law renders the application before a Court of law incompetent. Similarly, in the earlier decision of the CAT in the case of **NBC Ltd vs Sadrudin Meghji (1998) TLR 503**. An application filed in unapplicable section of the law makes the Court not properly moved, and the application is likewise incompetent.

Mr. Masige also averred that a party is not choosy to the law but it is the law that dictates so. Therefore, this application as filed, has not properly moved this Court for determination. He convinced this Court by referring to the decision of this court in the case of **Dagala Kanuda (as administrator of the estate of the late Mbal Kushaha Buruda) vs Masaka Ibeho & 4 Others, Land Appeal No. 26 of 2015**, HC, Tabora at page 10 that an application has no legal basis to determine incompetent applications. He then pressed for the application be dismissed with costs.

On behalf of the applicant,, Mr. Masunga argued that in his formed view, the application is properly before this court. The cited provision by



the respondent's counsel gives power this court to grant application for extension of time where there is a reasonable cause.

Section 14 of the Law of Limitation gives power to the court to grant such an application equally as it does section 11(1) of AJA. Since Section 14 of the Law of Limitation Act gives the similar power to the court for extension of time. He banked his argument by reference to the case of **Ally Sakin Said vs Idd Athuman Ndaki**, Misc. land Application No. 718 of 2020, HC, Land Division, where the court well researched on how section 14 of the Law of Limitation Act is identical to s. 11(1) of AJA.

Therefore, the argument that the Law of Limitation Act (supra) is not applicable for extension of time for matters to CAT is not legally maintainable and incorrect. He argued that, this court is also mandated under S.14(1) of LLA to consider such an application. Therefore, apart from S.11(1) of AJA, the LLA has this provision of the law. Since S.47(2) of the LLA directs the same be forwarded to High court, and this being High court, then it is properly before the Court. The cited cases by Mr. Masige, are not applicable as there is also another law granting such power. Similarly, in the case of **Daniel Dangala Kaunda**, the facts stated are different from the facts in the current application. He therefore prayed for the legal objection be dismissed with costs.

In rejoinder Mr. Masige stated that the cited case of **Ally Sakin Said**, (supra), is very clear that the application therein, in the said application, it used both provisions, (s.14(1) of LLA and s.11(1) of AJA and s.47(2) of (DCA. Therefore, it is distinguishable from the scenario in the present case.

Secondly, he submitted that the said decision is of the High Court, this does not bind this court. Where there is a decision of the High court being in conflict with Act of the parliament, the Act of Parliament prevails. That the cited case laws are not relevant. What dictum is being drawn from these judgements is that an incompetent application is not determinable by the Court, but liable from being struck out. The decisions mainly maintain the legal position that an application brought under a wrong law is violative under the eyes of the law, argued Mr. Masige. The cited case of **Daniel Ndangala Kaunde** is authoritative on that, that a crippled application is subject to being struck out with costs.

Upon a thorough scanning of the applicant's application and submissions of both parties, the issue for consideration is whether the preliminary objection by the respondent's counsel is merited.

Mr. Masige had alerted this court that, the application by the applicant has been brought under wrong provision incompetent to move

this court to determine such application. The application by the applicant is founded under section 14(1) of the Law of Limitation Act. The application concerns extension of time to file application to seek leave to appeal to Court of Appeal of Tanzania. Therefore, the correct provisions were supposed to be section 11 of Appellate Jurisdiction Act, section 47 of the Land Disputes Court Act and Court of Appeal Rules. Those could be enabling provisions equitable to move this Court taking the incidence that the Law of Limitation Act does not apply to CAT.

Mr. Masunga's reaction to that argument was not pros on the fact that, the application before the Court is correctly founded. The cited proviso by Mr. Masige in totality, equally provides powers to this Court to determine the similar application.

The application by the applicant is for the relief of extension of time within which the applicant may file an application for leave to appeal to the Court of Appeal of Tanzania. The application is founded under section 14 (1) of the Law of Limitation Act.

As noted earlier the dispute between the parties is on the provision which the application is encroached. Now I find prudent to reproduce the conflicting provisions for easier consideration.



Section 14 (1) of the Law of Limitation Act provides that

*"Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application"*

Section 47(1) of the Land Disputes Court Act provides that

*"A person who is aggrieved by the decision of the High Court in the exercise of its original jurisdiction may appeal to the Court of Appeal in accordance with the provisions of the Appellate Jurisdiction Act."*

Section 11(1) of the Appellate Jurisdiction Act, provides that

*" 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.”*

From the extract above (old position of the law), my stance in relation to the provisions and complaint by the parties are that section 4 of the Appellate Jurisdiction Act confers jurisdiction to CAT to entertain appeals from High Court. Section 47 (1) of the Land Dispute Courts Act provides for the powers of High Court to determine application on question of certificate of point of law and application of alike.

Section 11 of the Appellate Jurisdiction Act (supra) gives powers to the High Court to consider application for extension of time for giving notice of intension to appeal, on the application for the leave to appeal or for a certificate that the case is a fit case for appeal upon expiry of such period.

Similarly, this Court is not barred by section 14(1) of the Law of Limitation Act to determine or handle such an application. The proviso empowers this court to determine this kind of application.

However, in consideration of the recent amendments brought by the Legal Sector Laws (Miscellaneous Amendments) Act No. 11 of 2023, particularly section 47 which amended section 47 (1) of the LDCA effective



1<sup>st</sup> December, 2023. For ease of understanding, I will reproduce the amendment concerned as hereunder: -

"Sec 47 The principal Act is amended in section 47

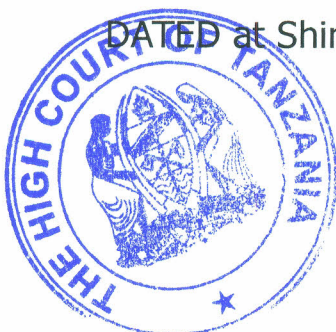
- (a) in subsection (1) by inserting the words "appellate or revisional" immediately after the word "original",
- (b) by deleting subsection (2)
- (c) by renumbering subsections (3) and (4) as subsections (2) and (3) respectively.

It is my interpretation, basing on the above exposition that, the changes have done away with leave requirement for one to appeal to the Court of Appeal against the decision of the High Court regardless of whether the impugned decision is an order, decree, an ex-parte decree or a preliminary decree when exercising its original, appellate or revisional jurisdiction. In other words, obtaining leave has ceased to be a requisite before one can appeal to Court effective the 1st December, 2023 (See the recent decision by the Court of Appeal in **Petro Robert Myavilwa vs Zera Myavilwa & Another** (Civil Application No. 117/06 of 2022) [2023] TZCA 17947 (13 December 2023)

As alluded to earlier, the application at hand seeks for extension of time to apply for leave to appeal to Court so as to challenge the decree of the High Court when exercising its appellate jurisdiction in Land Appeal No. 83 of 2021. The changes, being procedural law which its applicability has retrospective effect, has a bearing to the application at hand in my view. Since leave is no longer a requirement at the wake of the said amendment, it being barred by law, this court can as well not grant it (See **Robert Kadaso Mageni vs Republic** (Criminal Appeal No.476 of 2023) [2023] TZCA 17504 (18 August 2023) at page 8 para 2. As such, this application has been overtaken by event and the only remedy is to strike it out as I hereby do. No cost is awarded as the move was caused by the operation of the law. The applicant to take the necessary cause as per law for the furtherance of the intended appeal.

With the above finding, continuing dealing with other arguments will, in my view, serve no purpose.

It is so ordered.



DATED at Shinyanga this 7<sup>th</sup> day of February, 2024.

**F. H. Mahimbali**  
**Judge**