IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 497/17 OF 2016

LAURENT MARTIN MPEKA ..... APPLICANT

VERSUS

BERTHA JOHN GITA ..... RESPONDENT

(Application for extension of time to file an application for leave to appeal from the decision of the High Court of Tanzania at Dar es Salaam)

(Ndika, J.) (as he then was)

Dated 27th day of April, 2014

In

Land Appeal No. 99 of 2014

RULING

9th October & 2nd November, 2017

MWARIJA, J.A.:

In this application, the applicant has by a notice of motion, moved the Court for an order granting him an extension of time to do the following: -

> *"... to apply for a second bite for leave to lodge an appeal against the Judgment and Decree on appeal of the High Court of Tanzania, Land Division (Hon. Ndika, J.) dated 27th April, 2014..."*

The application which has been supported by the applicant's affidavit, was brought under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). The respondent, who filed an affidavit in reply to the applicant's affidavit, resisted the application.

At the hearing, the applicant appeared in person, unrepresented while the respondent had the services of Mr. Sylvester Sengerema, learned counsel.

Submitting in support of the application, the applicant relied on the facts which he deponed in his affidavit regarding the cause of the delay in filing the intended application; that is, an application for leave to appeal to this Court against the impugned decision. The main reason, according to the applicant's affidavit, is contained in paragraphs 12 and 13 of the affidavit. He states as follows:-

> *"12. That I made follow up of a copy of the ruling and document order dated 9th November 2016 which came to be supplied to me on the 20th November, 2016 and 29th November, 2016 respectively...."*
>
> *13. That I could not make an application for leave in this Court as a second bite before obtaining copies of the ruling and the drawn order of the High Court."*

In response, Mr. Sengerema did not at first, oppose the application. He submitted that the same has merit because it was filed within the period of 60 days from the date of receipt by the applicant, of copies of the ruling and the drawn order of the High Court. According to the learned

:ounsel, the ruling and the drawn order are essential documents for the application. However, when his attention was drawn to the provisions of S. 47(1) of the Land Disputes Courts Act, [Cap. 216 R.E. 2002] (the Act), the learned counsel argued that the application is misconceived because the Court does not have jurisdiction to entertain the intended application for leave to appeal. He agreed that when an application for leave to appeal made under that section has been refused by the High Court, a person cannot come to this court by way of a second bite as intended by the applicant. On that stance, Mr. Sengerema prayed to the Court to dismiss the application.

As pointed out above, the applicant is moving the Court to grant him an extension of time to lodge, by way of a second bite, an application for leave to appeal against the decision of the High Court sitting as a Land Court. Under S. 47(1) of the Act, decisions of the High Court in land cases are appellable to the Court with leave of the High Court. The provision states as follows:-

> " *Any person who is aggrieved by the decision of the High Court in the exercise of its original, revisional or appellate jurisdiction, may* ***with leave of the High Court*** *appeal to the Court of Appeal in accordance with the Appellate Jurisdiction Act, 1979."*
>
> [Emphasis added].

From the clear wording of this provision of the Act, it is only the High Court which is vested with jurisdiction to entertain an application for leave to appeal against a decision of the High Court in land cases - See for example, the case of **Felista John Mwenda v. Elizabeth Lyimo**, MSH Civil Application No. 9 of 2013 (unreported). In that case, the Court stated as follows:-

> *"The Court of Appeal, in terms of the clear provisions of section 47 (1) of Cap. 216 lacks jurisdiction to entertain the application."*

Given the above stated position of the law, when an application filed under S. 47 (1) of the Act is refused by the High Court, the aggrieved party cannot come to the Court by way of a second bite application. The proper course is to prefer an appeal subject to the provisions of S.5 (1) (c) of the Appellate Jurisdiction Act [Cap. 141 R.E. 2002] (the AJA). See the case of **Tumsifu Anasi Maresi v Luhende Jumanne Selemani and Another**, TBR Civil Application No. 184/11 of 2017 (unreported).

Now therefore, since the purpose for which the intended application is sought cannot be achieved on the ground of lack of jurisdiction by the Court, there is no gainsaying that this application is not tenable. It is for this reason, misconceived. In a similar situation, in the case of **Elly Peter**

Sanya v. Ester Nelson, Civil Application No. 3 of 2015 (unreported), the applicant applied for extension of time to file an application for a certificate that a point of law was involved in the intended third appeal. Having considered the provisions of S. 5(2) (c) of the AJA, the Court held that, since under that section, it is the High Court which is vested with exclusive jurisdiction to certify that a point of law was involved in the intended appeal, the application for extension of time was untenable.

On the basis of the above stated reasons, this application which has been misconceived, is hereby found to be incompetent. The same is, as a result, struck out with costs.

DATED at **DAR ES SALAAM** this 31st day of October, 2017.

A. G. MWARIJA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

E. Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL