

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

**CIVIL APPLICATION NO. 126/17 OF 2017  
(ARUSHA CIVIL APPLICATION NO. 42 OF 2016)**

**TUMAINI MENG'ORU ..... APPLICANT  
VERSUS  
ISRAEL MEILARI ..... RESPONDENT**

**(Application from the decision of the High Court of  
Tanzania at Arusha)**

**(Moshi, J.)**

**Dated 11<sup>th</sup> day of November, 2016**

**In**

**Civil Application No. 130 of 2016**

**RULING**

**9<sup>th</sup> & 13<sup>th</sup> March, 2018**

**MWARIJA, J.A:**

By a Notice of Motion filed on 25/11/2016, the applicant Tumaini Meng'oru has moved the Court under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) to grant him an extension of time to file an application for leave to appeal to the Court. The applicant intends to appeal against the decision of the High Court of Tanzania at Arusha in Misc. Land Case No. 53 of 2010 (Sambo, J., as he then was) dated 28/3/2013. The decision which is sought to be appealed against originated from the Kiranyi Ward Tribunal. The applicant had earlier on applied for extension of time in the High Court of Tanzania at Arusha in Misc. Civil

Application No. 130 of 2016. The application was however dismissed for want of merit. He has now come to this Court by way of a second bite.

The application which is supported by the affidavit of Edmund R. Ngemela, the applicant's counsel, is contested by the respondent, Israel Meliari through his affidavit in reply filed on 30/12/2016.

At the hearing of the application, the applicant was represented by Mr. Edmund Ngemela, learned counsel whereas the respondent had the services of Mr. Jeremiah Siayi, learned counsel.

As stated above, the decision sought to be appealed against originates from the decision of the Ward Tribunal. For this reason, under s. 47(2) of the Land Disputes Courts Act [Cap. 216 R.E. 2002], the applicant was required to obtain from the High Court, a certificate that there is a point of law involved in the appeal (the Certificate). According to the record, the applicant has complied with that requirement. He sought and obtained the Certificate from the High Court on 11/7/2014 in Misc. Land Application No.34 of 2013.

In the circumstances, before the application could proceed to hearing, I required the learned Counsel for the parties to submit on

whether or not apart from the Certificate, leave is also a requirement for the intended appeal.

Mr. Ngemela did not at first, have a direct answer but in the course of his submission, he argued that by virtue of the provision of s. 47 (1) and (2) of Cap. 216, both leave and the Certificate are necessary requirements for the intended appeal. On his part Mr. Siayi submitted that since the applicant had obtained the certificate he does not require leave to appeal to the Court.

The learned counsel for the parties did not cite any authorities to support their rival arguments. From some of the decisions which I managed to get however, the Court had expressed different views on the issue. In the case of **Marco Kimiri and Another v. Naishoki Eliau Kimiri**, Civil Appeal No. 39 of 2012 (unreported), it was stated as follows:

*"...no such leave to appeal is required under the Court (Land disputes Settlement) Act for an appeal originating from the Ward Tribunal, as the case at hand".*

However, in another decision, **Jerome Michael v. Joshua Okonda**, Civil Appeal No. 19 of 2014 (unreported), the Court had this to say:-

*"...the appellant who wishes to access the Court of Appeal for a third appeal for a Land dispute which originated from the Ward Tribunal is required to seek from the High Court of Tanzania (Land Division) two orders. The first is an order seeking for leave to appeal.... The second requirement the appellant has to comply with under section 47(2) is to get a certificate from the High Court that a point or points of law are involved in the matter for the determination of the Court of Appeal...."*

In my considered view, since it is mandatory under s.47 (1) of Cap. 216, for a person who is aggrieved by the decision of the High court made in its original, revisional or appellate jurisdiction to obtain the leave of the High Court, compliance with that requirement is indispensable even where the Certificate has been obtained. The two requirements must be complied with. This is because, whereas, such an appeal must be with the leave of the High Court, an appeal from a decision originating from a Ward Tribunal being a third appeal, must be on points of law hence the requirement for the Certificate.

Reverting now to the application at hand, the main cause for the delay relied upon by the applicant is stated in paragraph 6 of the affidavit filed in support of the application. In that paragraph, the deponent states as follows:

*“That after receiving the copies of judgment and Drawn order on 15/6/2016 and while I was preparing the Appeal, I discovered that the applicant’s Appeal shall be incompetent to the Court of Appeal for fail (sic) to comply with section 47(1) of the Land Disputes Court Act which require the Appellant in the third Appeal to sick **leave and certificate on point of law.**”*

In his submission, Mr. Ngemela argued that since the applicant had come to realize that he was required leave after he had all along been pursuing the application for the Certificate, which he later obtained thus signifying that he did not sit without taking any action, the ground stated in the affidavit amounts to a sufficient cause. The learned counsel prayed that the application be granted.

Mr. Siayi opposed the submission made by the applicant’s counsel. He argued the applicant is in essence, pleading ignorance of the law; that

he was not aware of the requirement that leave to appeal was required. According to Mr. Siayi, ignorance of law does not constitute a sufficient cause for delay. He prayed that the application be dismissed with costs.

Having considered the submissions, I agree with the learned counsel for the respondent that the applicant has not established a sufficient cause for grant of extension of time. By arguing that the application for leave could not be filed within the prescribed time because the applicant was not aware of that requirement, the learned counsel is in effect, relying on ignorance of the law as a cause of the delay. There is a string of authorities to the effect that ignorance of law does not constitute a sufficient cause for extension of time. For example, in the case of **Ngao Godwin Losero V. Juius Mwarabu**, Civil Application No. 10 of 2015 (unreported), the Court had this to say:

*"As has been held times out of number, ignorance of law has never featured as a good cause for extension of time (see, for instance, the unreported ARS. Criminal Application No. 4 of 2011 –**Bariki Israel Vs. The Republic; and MZA. Criminal Application No. 3 of 2011 – Charles Salugi Vs. The Republic.**) To say the least, a diligent and prudent party who is not properly seized of*

*the applicable procedure will always ask to be appraised of it for otherwise he/she will have nothing to offer as an excuse for sloppiness."*

– See also the case of **Songoro Mzee Abdalla v. Silima Vua Silima**, Civil Application No. 05 of 2010 (unreported).

On the basis of the reasons stated above, I find that this application is devoid of merit. The same is therefore hereby dismissed with costs.

**DATED** at **ARUSHA** this 12<sup>th</sup> day of March, 2018.

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**