

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

(CORAM: WAMBALI, J.A., KEREFU, J.A. And MWAMPASHI, J.A.)

CIVIL APPEAL NO. 17 OF 2019

MARIAM NYANGASA.....APPELLANT

VERSUS

SHABANI ALLY SEMBE.....RESPONDENT

**(Appeal from the decision of the High Court of Tanzania,
Land Division at Tanga)**

(Mruma, J.)

dated the 21st day of November, 2018

in

Misc. Land Application No. 44 of 2018

RULING OF THE COURT

9th & 18th May, 2022

KEREFU, J.A.:

This matter originated from the decision of the Ward Tribunal of Maramba (the Ward Tribunal), in the District of Mkinga within Tanga Region, where the respondent, vide Civil Case No. 20 of 2015, sued the appellant for recovery of a parcel of land (disputed land) which was allegedly trespassed by the appellant.

The material facts of the dispute as obtained from the record of the appeal indicate that, having heard the parties and considered the evidence adduced before it, on 6th July, 2015, the Ward Tribunal decided the case in favour of the respondent and the appellant was ordered to demolish the

structure she had constructed on the disputed land. It is noteworthy that, since there was no appeal preferred against the decision of the Ward Tribunal issued on 6th July, 2015, the respondent applied for execution of same vide Miscellaneous Land Application No. 78 of 2015 before the District Land and Housing Tribunal (the DLHT) for Tanga. Having examined the record and heard the application, the DLHT appointed a court broker to carry out the demolition of the appellant's structure built on the disputed land. The applicant was dissatisfied with the decision of the DLHT, however, as it appears, she was out of time to challenge the same. She thus filed, in the High Court, Miscellaneous Land Application No. 90 of 2016 seeking extension of time within which to file a notice of appeal out of time to challenge the said decision of the DLHT. However, that application was struck out by the High Court (Masoud, J.) on 6th February, 2016 on account of the applicant's affidavit being accompanied by a defective verification clause.

The appellant was aggrieved by the said decision, but again, could not challenge it in time. As such, she successfully lodged Civil Application No. 139/12 of 2017 in this Court (Mwambegeie, J.A.) for extension of time within which to lodge a notice of appeal. Subsequently, the appellant lodged a notice of appeal in this Court on 4th December, 2018. A little later

and while preparing for the record of appeal and the memorandum of appeal, the counsel for the appellant was of the view that, since the matter originated from the Ward Tribunal, a certificate on point of law should be sought from the High Court before appealing to this Court.

Subsequently, and being out of time to procure the said certificate, the appellant filed Miscellaneous Land Application No. 3 of 2018 seeking extension of time within which to file an application for certificate on point of law. The said application was struck out, by the High Court (Khamisi, J.) on 25th May, 2018 on technical grounds. Again, and undaunted, the appellant filed Miscellaneous Land Application No. 44 of 2018 in the High Court seeking for similar prayers. Having heard the application, the High Court (Mruma, J.) dismissed the application on 21st November, 2018 on account of failure by the appellant to adduce good cause for the delay. Following that refusal, the appellant lodged the current appeal containing three grounds of complaints. However, for reasons which will be apparent shortly, we do not deem it appropriate, for the purpose of this judgment to reproduce the said grounds herein.

When the appeal was placed before us for hearing, both, the appellant and the respondent appeared in person without legal representation.

At the outset, we wanted to satisfy ourselves on the propriety or otherwise of the appeal before us in terms of Rule 45A (1) (c) of the Tanzania Court of Appeal Rules, 2009 as amended (the Rules) taking into account that the same was lodged in this Court after refusal by the High Court to extend time within which to apply for certificate on point of law.

In response, and upon a brief dialogue with the Court, the appellant conceded that the appeal is misconceived. That, upon a refusal by the High Court to extend time within which to apply for certificate on point of law, the appellant, in terms of Rule 45A (1) (c) of the Rules was required to lodge a similar application in this Court within fourteen (14) days from the date of the said refusal. In that regard, the appellant prayed for the appeal to be struck out with no order as to costs, as she argued that the issue leading to the striking out of the appeal was raised *suo motu* by the Court.

On his part, the respondent also emphasized that the appeal is misconceived as the same was lodged contrary to the requirement of Rule 45A (1) (c) of the Rules. He, however, prayed that he should be awarded costs as he had spent time and resources while preparing for the hearing of the appeal including travelling costs from Tanga to Dar es Salaam to

appear for today's hearing. However, and after a brief dialogue with the Court, he decided to leave the issue of costs to the discretion of the Court.

Having considered the submissions made by the parties, it is clear that, both parties are in agreement that in terms of Rule 45A (1) (c) of the Rules, upon refusal by the High Court to grant an application for extension of time to apply for certificate on point of law, it was improper for the appellant to lodge the current appeal. For the sake of clarity, and to appreciate the decision which we are going to make, we take the liberty to reproduce the provisions of Rule 45A (1) (c) of the Rules, which provides that: -

"Where an application for extension of time to apply for a certificate on a point of law is refused by the High Court, the applicant may within fourteen days of such decision apply to the Court for extension of time."

It is apparent that, the above reproduced provision of the law provides for an avenue for the applicant, after refusal by the High Court to grant an application of extension of time to apply for a certificate on a point of law, to lodge a similar application in this Court for the determination. That is commonly known as a second bite application. In the case of **Kahambi**

Iddi v. Hidaya Shabani, Civil Application No. 544/11 of 2018, this Court when considering the applicability of the above provision, stated that: -

"It is the requirement of the law, in terms of Rule 45A (1) (c) of the Rules that, where an application for extension of time within which to lodge an application for a certificate on a point of law is refused by the High Court, a similar application to this Court must be made within fourteen days of the refusal."

In the instant appeal, it is on record, and as submitted by both parties that the appellant did not comply with the above requirement, as upon refusal by the High Court to grant an application for extension of time to apply for certificate on point of law, she lodged the current appeal instead of lodging a similar application to this Court as a second bite. That is to say, in an application for extension of time to apply for certificate of point of law, the High Court and this Court have concurrent jurisdiction. Therefore, the Court has no jurisdiction to re-evaluate and reverse the decision of the High Court which refused the application for extension of time to apply for a certificate on point of law. As such, in the current appeal, we are not expected to consider whether the learned Judge of the High Court was justified to refuse the appellant's application. We thus

agree with both parties that the appeal before us is misconceived and therefore incompetent.

Before we conclude, we wish to state that, for the interest of justice and considering the nature of the decision of the High Court sought to be challenged on appeal, the appellant may need to approach an advocate for legal advice on the appropriate way forward. We say so because, it is evident at paragraph 5 of the appellant's affidavit to this Court in respect of Civil Application No. 139/12 of 2017, found at page 45 of the record of appeal that the appellant on 6th February, 2017 had lodged a notice of appeal against the decision of the High Court (Masoud, J.) in Miscellaneous Application No. 90 of 2016 where the application was struck out as the applicant's affidavit was accompanied by a defective verification clause. The said notice of appeal is still pending in this Court.

It is also on record that, although, in Miscellaneous Land Application No. 44 of 2018, the subject matter of this appeal, the appellant was seeking extension of time to apply for certificate on point of law suggesting that the decision she was challenging before the High Court originated from the Ward Tribunal but, as intimated earlier, the decision of the Ward Tribunal dated 6th July, 2015 was not challenged by either party before the DLHT. All subsequent applications by the appellant before the High Court

intended to challenge the decision of the DLHT in Miscellaneous Land Application No. 78 of 2015 lodged by the respondent to execute the decision of the Ward Tribunal.

In the circumstances, we think, an appropriate legal advice to the appellant would facilitate an informed decision on the further steps and appropriate route to be pursued in her desire to challenge the respective decision of the High Court.

In the event and for the foregoing reasons, we find the appeal incompetent and it is hereby struck out. In the circumstances, and since, the issue leading to the striking out of the appeal was raised *suo motu* by the Court, we order each party to bear its own costs.

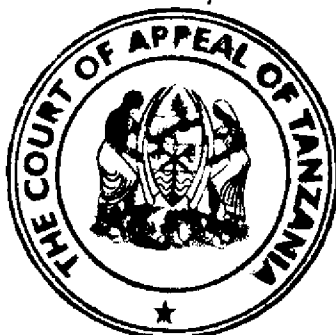
DATED at DAR ES SALAAM this 16th day of May, 2022.


F. L. K. WAMBALI
JUSTICE OF APPEAL

R. J. KEREFU
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

The ruling delivered this 18th day of May, 2022 in the presence of Mr. Imman Jaffari Rashid son of the Appellant and Respondent in person via video conference, is hereby certified as a true copy of the original.




C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL