

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

CIVIL APPLICATION NO. 269/08 OF 2021

MAENDELEO KIRIBA..... APPLICANT

VERSUS

**1. TABU MAJIRA SORI
2. PATRICE KICHOMORI MAKANGÁ } RESPONDENTS**

**(Application for extension of time to file Application for leave to appeal
to the Court of Appeal out of time, against the Ruling of the
High Court of Tanzania at Mwanza)**

(Rumanyika, J.)

**dated the 31th day of March, 2021
in
Application No. 104 of 2020**

.....

RULING

7th & 17th February, 2022.

MAKUNGU, J.A.:

Before me is a notice of motion dated 28th April, 2021, filed by the applicant on 3rd May, 2021. The Court is being moved under Rule 10 of the Tanzania Court of Appeal Rules, 2009 as amended (the Rules). The applicant is seeking extension of time within which to file an application for leave to the Court out of time against the ruling of the High Court of Tanzania at Mwanza (Hon. S. M. Rumanyika, J. as he then was) in Misc. Land Application No. 104 of 2020. The notice of motion is supported by an affidavit sworn by the applicant.

The back ground of this matter is that, the parties had a dispute over a piece of land. The respondent had successfully sued the applicant at Nyankwanga Ward Tribunal for recovery of the piece of land measuring 20 acres. The applicant was aggrieved by the order of the trial Ward Tribunal and hence he appealed to the District Land and Housing Tribunal at Musoma (the DLHT) in Land Appeal No. 135 of 2015. The applicant lost at the DLHT and hence lodged appeal No. 100 of 2017 before the High Court of Tanzania at Mwanza. The applicant lost his appeal before the High Court just as it was before the DLHT.

After the High Court had delivered its judgment, the applicant preferred an application for leave in Misc. application No. 151 of 2019. The said application was dismissed for non-appearance of the applicant. The applicant filed Misc. Application No. 05 of 2020 to set aside the dismissal order in respect of application No. 151 of 2019 but the same was dismissed as well for lack of merits. Following that dismissal the applicant filed Misc. application No. 104 of 2020 for leave to appeal to the Court against the dismissal order in respect of Misc. Application No. 05 of 2020, but like previous applications, application No. 104 of 2020 was dismissed for being time barred. The

applicant has now come to the Court seeking for extension of time to apply for leave.

Consequent to the foregoing, the respondents filed a notice of preliminary objection on 6th July, 2021 to the effect that the *"Court has no jurisdiction to entertain the application because the jurisdiction to extend time for making an application for leave to appeal is within the domain of the High Court."*

When the application was called on for hearing on 7th February, 2022 the applicant appeared in person without legal representation and the same to the respondents.

As the practice of the Court demands, I had to dispose of the preliminary objection first. Thus the 2nd respondent argued the preliminary objection to the effect that, this Court has no jurisdiction to grant this application. He told me that this application ought to be filed in the High Court first before coming to this Court. To fortify his contention, he cited the decision of this Court in **Josephine A. Kalalu v. Issack Michael Mallya**, Civil Reference No. 1 of 2010 C.A at Mwanza (unreported). For that reason, he prayed that this application be struck out with costs.

The 1st respondent concurred with the submission by his co-respondent.

In response to the foregoing submission, the applicant had nothing useful to submit on that legal point. He simply told the Court that he was a layperson who did not know the proper Court's procedure. He thus put trust in the Court to do justice as circumstances dictate.

I have carefully considered the arguments by the respondents in the light of the record of the application. Having so done, I think I am prepared to swim their current. In joining hands with the respondents I shall start my determination by reproducing the provision of section 11(1) of the Appellate Jurisdiction Act (R.E. 2002) (Cap 141) (henceforth the "AJA"). Section 11(1) of AJA reads:

" (1) subject to subsection (2), the High Court or, where an appeal lies from a 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."

The above section actually confers on the High Court Jurisdiction to extend time for giving notice of intention to appeal, making an application for leave to appeal or for a certificate on a point of law. The AJA also confers, in section 5(1) (c), concurrent jurisdiction on both this Court and the High Court, power to grant leave to appeal to this Court.

All the same, Rule 47 of the Rules provides that "*whenever an application may be made either to the Court or to the High Court, it shall in the first instance be made to the High Court...*". Established law is that if a party fails in the bid to get an order of such extension of time from the High Court, a second bite in this Court was permissible under Rule 10 of the Rules and thereafter an aggrieved party would have proceeded by way of a reference under Rule 62. Such application, however, had to be made within 14 days of the decision of the High Court.

In this application, as the record shows, no such application has been filed by the applicant before the High Court.

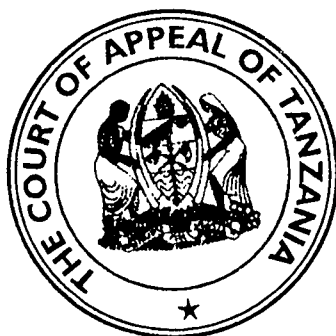
I have gone through the cited case of **Josephine A. Kalalu** (supra) and found it relevant to this application. In the application at hand, as submitted by the respondents and to my mind rightly so, this Court cannot legally entertain and hear this application before the same is heard by the High Court.

In the event, I sustain the preliminary objection and strike out the incompetent application with costs to the respondents.

DATED at **MWANZA** this 16th day of February, 2022.

O. O. MAKUNGU
JUSTICE OF APPEAL

The Ruling delivered this 17th day of February, 2022 in the presence of applicant and the 2nd respondent both in person and absence of 1st respondent is hereby certified as true copy of the original.




G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL