

IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

(CORAM: NDIKA, J.A., RUMANYIKA, J.A., And MURUKE, J.A.)

CIVIL APPEAL NO. 219 OF 2021

ATUPAKISYE MWAKIKUTI APPELLANT

VERSUS

SEKELA MWAKIKUTI FIRST RESPONDENT

MBONILE KAPALATA SECOND RESPONDENT

(Appeal from the Ruling and Order of the High Court of Tanzania at Mbeya)

(Levira, J.)

dated the 4th day of July, 2018

in

Miscellaneous Land Application No. 81 of 2017

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JUDGMENT OF THE COURT

13th & 16th February, 2024

NDIKA, J.A.:

Atupakisye Mwakikuti, the appellant herein, challenges the decision of the High Court of Tanzania in Miscellaneous Land Application No. 81 of 2017 by which her quest for extension of time was dismissed with costs upon a preliminary objection being sustained that the matter was time-barred.

The context in which the above issue arises is, very briefly, as follows: the appellant vainly sued Sekela Mwakikuti and Mbonile Kapalata, the first and second respondents respectively, in the District Land and Housing Tribunal of Mbeya District at Mbeya for ownership and possession of certain landed property. Her appeal to the High Court – Land Appeal No. 16 of 2008 – was also barren of fruit as Lukelelwa, J., dismissed it with costs. Still unrelenting, she started a process to appeal to this Court, which included lodging in the High Court an application – Miscellaneous Land Application No. 27 of 2012 – through which she sought and obtained two combined reliefs: one, extension of time to apply for leave to appeal to this Court; and two, leave to appeal. It is plain from Karua, J.'s ruling dated 11th March, 2013 that along with the grant of the said leave, he ordered her as follows:

"The applicant [shall] present [her] appeal [to the Court of Appeal] within the period of ten days."

It turned out that the appellant dawdled, resulting in the said period of ten days elapsing without lodging her intended appeal. To revive her quest for appeal, she lodged certain applications, which ended up being

struck out on technical grounds. Thereafter, she filed Miscellaneous Land Application No. 26 of 2014 seeking extension of time to comply with Karua, J.'s consequential order. Before the matter was heard and determined, she sought and obtained leave of the court (Levira, J., as she then was) to amend her chamber summons within seven days. Again, she missed the deadline. Still undeterred, she filed yet another application – Miscellaneous Land Application No. 81 of 2017 – seeking extension of the seven days period Levira, J., as she then was, had granted her in Miscellaneous Land Application No. 26 of 2014.

The respondents strongly opposed the application by lodging a counter affidavit and raising a preliminary objection to the effect that the application – Miscellaneous Land Application No. 81 of 2017 – was time-barred. The court (Levira, J., as she then was) sustained the preliminary objection and dismissed the application with costs.

For the appellant, Mr. Chapa Alfredy, learned counsel, appeared before us and argued the appeal on 13th February, 2024 on two grounds. In essence, he censured the High Court for holding that Miscellaneous Land Application No. 81 of 2017 was time-barred by applying Item 21 Part II of

the Schedule to the Law of Limitation Act, Cap. 89. The respondents, who were self-represented, vigorously opposed the appeal.

On 14th February, 2024, Mr. Alfredy and the respondents appeared again before us as we recalled them to address us on the propriety and soundness of Karua, J.'s consequential order. We had considered that the said order was plainly the genesis of the flurry of unsuccessful applications for extension of time that the appellant lodged and pursued in the High Court.

It dawned on Mr. Alfredy that the said consequential order was improper. He submitted, quite briefly, that the High Court had no power, in any application for leave to appeal, to prescribe the period within which a civil appeal to this Court should be filed. Accordingly, he moved us to revise and vacate the order in pursuance of our revisional jurisdiction under section 4 (2) of the Appellate Jurisdiction Act, Cap. 141 ("the AJA"). The respondents, on their part, had nothing useful to say. They were contented with the wisdom of the Court prevailing over the issue.

We are decidedly of the view that it would be remiss of us to deal with this appeal based on the two grounds of complaint raised in the memorandum of appeal while aware that the flurry of the appellants' fruitless applications for extension of time, lodged and pursued back-to-back, were an outcome of the said consequential order made by Karua, J. We are, therefore, enjoined to interrogate the issue whether the said order was proper and sound.

It is common cause that Miscellaneous Land Application No. 27 of 2012 before Karua, J. was a motion predicated on section 11 (1) of the AJA as well as section 47 (1) of the Land Disputes Courts Act, Cap. 216 ("the LDCA"). In that matter, as hinted earlier, the appellant sought and obtained two combined reliefs: one, extension of time to apply for leave to appeal to this Court; and two, leave to appeal.

Section 11 (1) of the AJA vests the High Court with the power to extend time for, among others, lodging applications for leave to appeal to this Court. It stipulates that:

*"11.-(1) 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."*
[Emphasis added]

Section 47 (1) of the LDCA, as it was at the material time, empowered the High Court to grant leave to appeal from its decisions in the exercise of its original, revisional or appellate jurisdiction. It enacted as follows:

"47.-(1) Any person who is aggrieved by the decision of the High Court in the exercise of its original, revisional or appellate jurisdiction, may with the leave from the High Court appeal to the Court of Appeal in accordance with the Appellate Jurisdiction Act, 1979."

It is evident from both provisions above that while the High Court had authority to grant the two orders sought by the appellant, it did not have any mandate to prescribe or fix the period within which she had to lodge her intended appeal. We respectfully hold that the learned judge slipped into error by issuing the said consequential order. Since he acted without any jurisdiction, the consequential order was a nullity.

It occurs to us that the learned judge was most probably unaware that institution of civil appeals to this Court is regulated by rule 90 of the Tanzania Court of Appeal Rules, 2009. For our present purposes, we find it imperative to extract sub-rule (1) of that rule:

"90.-(1) Subject to the provisions of rule 128, an appeal shall be instituted by lodging in the appropriate registry, **within sixty days of the date when the notice of appeal was lodged with –**

- (a) a memorandum of appeal in quintuplicate;*
- (b) the record of appeal in quintuplicate;*
- (c) security for the costs of the appeal,*

*save that where an application for a copy of the proceedings in the High Court has been made within thirty days of the date of the decision against which it is desired to appeal, **there shall, in computing the time within which the appeal is to be instituted be excluded such time as may be certified by the Registrar of the High Court as having been required for the preparation and delivery of that copy to the appellant.***"[Emphasis added]

The above provision prescribes sixty days as the limitation period for lodging an appeal to the Court. The said period must be reckoned from the date when the notice of appeal was lodged subject to exclusion of such time as may be certified by the Registrar of the High Court as having been required for the preparation and delivery of that copy to the appellant. It is inferable from this sub-rule that the High Court has no role in fixing time within which to lodge a civil appeal to the Court.

In the final analysis, we invoke our revisional authority in pursuance of section 4 (2) of the AJA and quash the consequential order in issue dated

11th March, 2013. Given that the protagonists in this matter are related, we think that justice demands that no order on costs be made.

DATED at MBEYA this 15th day of February, 2024.

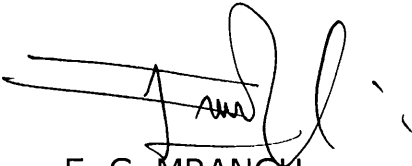
G. A. M. NDIKA
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

Z. G. MURUKE
JUSTICE OF APPEAL

Judgment delivered this 16th day of February, 2024 in the presence of Mr. Maulid Muganyizi Ibrahim who holding brief for Mr. Afredy Chapa, learned counsel for the Appellant and 1st and 2nd Respondents in person, is hereby certified as a true copy of the original.




E. G. MRANGU
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL