

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF  
TANZANIA**

**IN THE DISTRICT REGISTRY  
AT MWANZA**

**(HC) CIVIL APPEAL NO. 22 OF 2003**

**(From the decision of the High Court  
HC Civil Appeal No 22 of 2003, Hon  
Hon. Masanche, J.)**

**ASHANTE GOLDFIELDS LIMITED ..... APPLICANT**

**VERSUS**

**CONSTANTINE HOLANDI ..... RESPONDENT**

**RULING**

**MACKANJA, J.**

The respondent successfully sued the respondent before the Geita District Court for compensation in the sum of Shs.8,066,368.00 for releasing his land to the applicant who found that that land contained gold deposits. The applicant lost the first appeal before this Court where, Masanche, J., held, while dismissing the appeal, that:-

"The respondent had a clear case against the appellant in the District Court. I am surprised to see that the appellant spent quite great resources fighting a case which was clearly against them ...".

The High Court pronounced its judgment on 9<sup>th</sup> February, 2006. It is now quite clear that the appellant was aggrieved by the decision of this court. He has, therefore, brought this application in which he seeks leave of this Court to appeal against that decision before the Court of Appeal. The application is supported by the affidavit of Mr. Gallati, learned counsel who acts for the applicant.

Mr. Muna, learned counsel for the respondents, has raised two preliminary points of law to the following effect:-

1. that the application is hopelessly out of time; and
2. that the application is incurably defective.

It was Mr. Muna's contention that an application such as the one which is before me ought to have been brought under Rule 43(a)(b) of the Tanzania Court of Appeal

Rules, 1979. That according to Rule 43 of those Rules this application ought to have been filed within fourteen days of the decision against which it is desired to appeal, namely, 16th February, 2006. By necessary implication from Mr. Muna's arguments time within which to file this application accrued on 17<sup>th</sup> February, 2006 and expired on 3<sup>rd</sup> March, 2006. Instead of acting within the time frame which is provided for by the law, the applicant filed her application on 4<sup>th</sup> May, 2006, which was already out of time. It is in this context that Mr. Muna, learned counsel, prays that the application be struck out. Learned counsel did not argue the second preliminary point law, call it a preliminary objection, if you may wish to say so.

Mr. Galati, learned counsel, concedes that the application was not filed within the time which is prescribed by the law. He argues that they could not have acted in time because they were yet to be furnished with a copy of the judgment which was a necessary annexure to the application in terms of Rule 43(b) of the Tanzania Court of Appeal Rules. Therefore, he would have me dismiss the preliminary points of law.

After hearing the arguments by learned counsel, let me now say what must be done in an application for leave to appeal before the Court of Appeal. In the first instance there is section 5(1)© of the Appellate Jurisdiction Act, Cap.141 RE 2002, which provides thus:-

"5-(1) In Civil proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal –

- (a) ...;
- (b) ...;
- (c) with leave of the High Court or of the Court of Appeal against ... every decree, order, judgment, decision or finding of the High Court".

Those provisions create jurisdiction by which the Court of Appeal and the High Court may hear and determine applications for leave to an aggrieved party to appeal against a decree, order, judgment or decision of the High

Court. Those provisions do not say how such leave may be sought. The procedure of how to go about securing leave of the High Court and of the Court of Appeal are to be found in Rule 43 of the Tanzania Court of Appeal Rules, which provides thus:-

"43. In civil matters –

- (a) where an appeal lies with leave of the High Court, application for leave may be made informally, when the decision against which it is desired to appeal is given, or by chamber summons according to the practice of the High Court, within fourteen days;
- (b) where an appeal lies with leave of the Court, application for leave shall be made in the manner prescribed in Rules 46 and 47 within fourteen days of the decision against which it is desired to appeal or, where application for

leave to appeal has been made to the High court and refused, within fourteen days from that refusal.”

It is plain and clear that Rule 43(1)(a) provides for procedure before the High Court whereas Rule 43(1)(b) lays down the procedure where an application for leave is made before the Court of Appeal. As by law provided, the application *shall* be made within fourteen days from the date of the decree, decision, order or judgment against which it is desired to appeal. In the instant matter the law required the applicant to institute the application on any day between 17<sup>th</sup> February 2006 and 3<sup>rd</sup> March, 2006. Where, as in the instant application, the applicant could not lodge the application in time, she was required to apply for extension of time within which to do so under section 11(1) of the Appellate Jurisdiction Act, which provides thus:-

“11-(1) Subject to subsection (2), the High Court ... may extend the time for giving notice of intention to appeal from a judgment of the High Court ... 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.”

What the applicant was required to do in this case, after having failed to beat the time of fourteen days within to lodge an application for leave to appeal to the Court of Appeal, was to institute an application for enlargement of time within which to do so as provided under section 11(1) of the Appellate Jurisdiction Act. It follows that failure to comply to the latter with the provisions of Rule 43 of Tanzania Court of Appeal Rules, coupled with the failure to adhere with the provisions of section 11(1) of the Appellate Jurisdiction Act have rendered the application to be time barred. Consequently, the first preliminary point of law succeeds. I will not make any observations on the second objection because, by necessary inference, it was abandoned.

As prayed by Mr. Muna, learned counsel for the respondent, the application is struck out for being time

barred. The respondent shall have the costs of this application.

The ruling shall be delivered by the District Registrar.

**Sgd. Josephat M. Mackanja**

**JUDGE**

**At Mwanza.**

**8/4/2008**

Date 17.4.2008

Coram: F. W. Mgaya (Mrs) – DR.

Applicant: Present.

Respondent: Present.

B/C: Bosco.

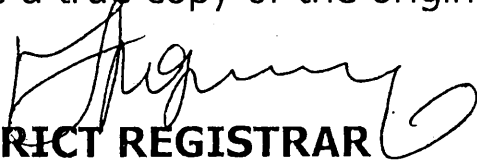
**Court:**

The ruling of the Court is delivered before me in Chambers this 17/4/2008 in the presence of the respondent and in the absence of the applicant who is duly notified.

**F. W. Mgaya  
DISTRICT REGISTRAR  
17/4/2008**



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

A handwritten signature in black ink, appearing to be 'A. Mwanza', written over the printed title.

**DISTRICT REGISTRAR**

**MWANZA**