

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT OF REGISTRY OF ARUSHA

AT ARUSHA

MISC. CIVIL APPL. NO. 57 OF 2015

(Originating from High Court Misc. C. Appl. No. 299/2014)

JUMA MTUNGIREHE.....APPLICANT

VERSUS

THE BOARD OF TRUSTEE OF TANGANYIKA

NATIONAL PARKS t/a TANZANIA NATIONALPARK....RESPONDENT

RULING

DR. M. OPIYO, J.

Before me is the application made under Rule 45 of the CA Rules 1979 R.E 2002 and section 5 (1) (c) of the Appellate Jurisdiction Act Cap. 141 RE 2002 and section 19 (2) of the Law of Limitation Act, Cap. 89 RE 2002. It is application for leave to appeal to the court of Appeal of Tanzania against the High Court Ruling in Misc. Civil Application No. 299 of 2014.

The matter proceeded ex-parte after the respondents failed appear to with no apparent reasons pursuant to the order of the Court dated 23rd September 2015. On the said ex parte hearing, the applicant submitted that he was dissatisfied with the ruling of this court in Misc. Civil application No. 299 of 2014 dated 19/1/2015 and intended to appeal to the Court of

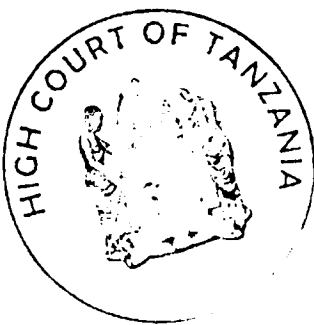
Appeal of Tanzania thus he made the this application on the grounds that there are points of law involved. The points of Law he advances for his application are mainly two. First is that Madam Massengi ruled that she heard the submission of both parties while the application was heard ex-parte. He argues that deciding so is wrong, because it s not so. Secondly is that Judge's explanation that since the applicant was an outpatient. Patient who was attending Kaloleni hospital occasionally, the sickness was not a sufficient reason to guarantee extension of time was also wrong as he did not know what the applicant was suffering from and to what extent.

However, in the course of writing this ruling, after a keener perusal of the records by this court the provisions of the Law upon which the application was brought raised my eye brows. The application is preferred under section 45 of the Court of Appeal Rules 1979 and section 5 (1) of the Appellate Jurisdiction Act plus the provision of section 19 (2) of the Law of Limitation Act. Court of Appeal Rules 1979 are no longer in existence and/or is no longer in force and section 19 (2) of LLA is dealing with period of waiting for copies of Judgment for the purpose of appeal section 5 (1) c of the Appellate Jurisdiction Act talks of when point of Law is involved.

It is a long standing requirement of the Law that for the court to be vested with requisite jurisdiction to determine a matter before it, it is mandatory for the party to refer to a specific piece of legislation applicable before the court acts. This has been resolved in a number of court decisions including but not limited to **Omary Kaluwe & others V Gray (T) Ltd Misc. Land Application No 76 of 2007 (unreported) HC Zuberi**

Mussa V Shinyanga Town Council, Civil Appl. No. 100 of 2004, Naibu Katibu mkuu (CCM) V Mohamed Ibrahim Versi & Sons (Znr) CA Civil Appl. No. 30/2003 (unreported). In all the above cases the court insisted on the need and requirement of citing a proper provision of the law in order to properly move the court to act.


Therefore from the above glaring principles of Law and the finding that the application has been brought under a dead Law and other wrong provisions of the Law it is not competently before this court. This court is not vested with requisite Jurisdiction to determine it. Since the matter raised touches on the jurisdiction of this court it can be raised any time. The application which is brought is not properly before this court, it is therefore struck. No order as to costs as the matter has been raised suo motu by the court.



Sgd

DR. M. OPIYO,
JUDGE
25/9/2015

I hereby certify this to be a true copy of the original.


DEPUTY REGISTRAR
ARUSHA
10/11/15