

**IN THE HIGH COURT OF TANZANIA**

**AT DODOMA**

**MISCELLANEOUS LAND APPLICATION NO. 32 OF 2017**

*(From Land Appeal No. 46 of 2015 of the High Court of Tanzania at Dodoma Originating from the Decision of the District Land and Housing Tribunal of Dodoma District at Dodoma in Land Application No. 26 of 2013)*

**EDWARD P. MAZUGUNI & OTHERS.....APPLICANT**

**VERSUS**

**KANISA LA MENNONITE.....RESPONDENT**

**RULING**

**05<sup>th</sup> & 23<sup>rd</sup> June, 2017**

**KWARIKO, J.**

Applicants herein lost appeal before this court by Sehel, J. They were aggrieved by that decision hence have filed this application for leave to appeal to the Court of Appeal of Tanzania. This application has been filed in terms of *Rule 45 (a) of the Court of Appeal Rules of 2009 GN 368 of 2009* and *section 47 (1) of the Land Disputes Courts Act No. 2 of 2002*. The application is supported by five affidavits of the applicants where it has been essentially deposed that this court misdirected itself to hold that the case was time barred since the dispute between the parties arose in 2003 when offer to the disputed land was granted to the respondent. On the other hand the respondent filed counter-affidavit sworn by their Advocate

one MALIMI JUMA where it has been deposed that the applicants are misleading the court as regards the accrual of the cause of action.

At the hearing of this application Mr. Mselingwa learned advocate argued the same where he submitted that the applicants intends to present to the Court of Appeal an issue whether their case was time barred as decided by this court since the dispute between the parties arose in 2003 when offer to the land was issued.

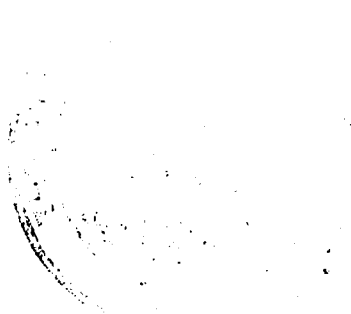
On his part Mr. Malimi learned counsel for the respondent argued that this application has no merit since before the trial tribunal the applicants said that the dispute arose in 2000 that is why this court upheld that the case was time barred and the date in the offer only misleads the court since the same was not a matter in dispute before the trial tribunal. Mr. Malimi contended that the issue of offer is a new fact hence should not be used to support this application. And even if the offer was one of the facts in the case but the same cannot be taken to be reason for the land dispute to arise. There was no rejoinder submission from Mr. Mselingwa Advocate.


At this point this court is required to decide whether this application has merit. Upon consideration of the affidavits in support of the application this court has found that the applicants have shown the issue that they intend to present to the Court of Appeal of Tanzania to be whether this court was right to uphold trial tribunal's decision that the suit was time barred since the cause of action arose in 2003 when offer to the disputed land was issued to the respondent. This court finds that the

application has merit and the objection by the respondent is the matter that will be considered when the appeal is filed in the Court of Appeal.

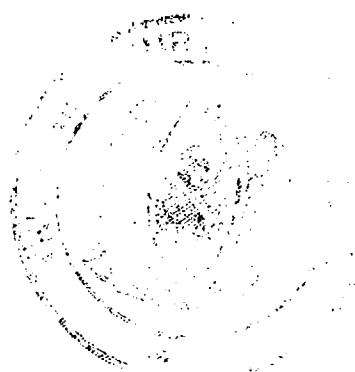
For the foregoing this application is granted. No order for costs.


Order accordingly.




  
**M.A. KWARIKO**  
**JUDGE**  
**23/6/2017**


Ruling delivered in court today in the presence of both parties and Ms. Judith court clerk.



  
**M.A. KWARIKO**  
**JUDGE**  
**23/6/2017**

**Court:** Right of Appeal Explained.



  
**M.A. KWARIKO**  
**JUDGE**  
**23/6/2017**