IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

MISC LAND APPLICATION NO. 56 OF 2018

(Arising from Miscellaneous Land Application No. 109 of 2015 of the High Court of Tanzania original from the decision of the Arusha Resident Magistrate Court Civil Case No. 46 of 2001)

MR. JULIUS CLEOPA (As administrator

Of the Estate of Cleopa Kirikengori ..... 1st APPLICANT

MR. DAUDI KIRIKENGORI ..... 2ND APPLICANT

MR. ALFAYO KIRIKENGORI ..... 3RD APPLICANT

MR. SAMUEL MEYAN ..... 4TH APPLICANT

MR. GODSON MEYAN .... 5TH APPLICANT

VERSUS

JOSIA LENGOYA SADEMAKI ..... RESPONDENT

MAIGE, J

RULING

In this matter the applicant has filed an *omnibus* application for two orders. **First**, for extension of time to file a notice of appeal to appeal to the Court of Appeal against the decision of the High Court of Tanzania in Miscellaneous Land Application No. 109 of 2015. **Second**, for an order of extension of time to apply for leave to appeal to the Court of Appeal. The

application is preferred under section 11 (1) of the Judicature and Appellant Jurisdiction Act (Cap. 141 R.E. 2002).

The application is grounded on the joint affidavit of the applicants. The respondent through his advocate Dr. Chama has questioned the competency of application on several legal grounds. In his additional point of preliminary objection raised on the hearing date, the counsel invited the Court to inquire into the appropriateness of the enabling provision. In his opinion, section 11(1) is incapable of moving the Court for the orders sought. The submissions of Dr. Chami, learned advocate for the respondent was that the respective provision cannot move the Court. The applicant would have cited the provision of section 42(2) of the LCDA, the counsel submitted. I cannot agree with him. Section 42(2) of the LCDA, I have read it, has nothing to do with extension of time to appeal to the Court of Appeal. Section 11(1) of the AJA is the appropriate enabling provision, in my view.

Yet in another ground, the counsel has invited the Court to hold that the application is fatally defective for wrong discreption of the name of the trial judge. Relying on the authority of the Court of Appeal in **MARWA KACHANG'A VS. R, CRIMINAL APPEAL NO. 84 OF 2015**, wherein an appeal was struck out for the reason of wrong description of the name of the judge who decided the matter in a notice of appeal, the counsel has invited me to sustain the preliminary objection. I have taken time to read the binding decision of the Court of Appeal. I am satisfied myself that the

rule cannot apply in the instant case since the facts in the said decision is materially different from the instant application.

In the said application, the wrong description of the name of the judge was in a notice of appeal. As observed by my Lords Justices of the Court of Appeal at page 3 and 4 of the ruling, a notice of appeal is as of law required to be in a prescribed form under rule 68(7) of the AJA. In accordance with the format, the name of the judge who decided the appeal is an essential ingredients of the notice of appeal. Conversely, the provision of section 11(1) of the AJA does not provides for special format of the application at the High Court for extension of time. Therefore, the application has to be by way of a chamber summons and affidavit as required by the CPC. Whether the name of the judge is an essential element in a chamber summons for extension of time, the CPC is silent. There is no specific requirement therein that the name of the judge must be stated. Therefore, the omission in the instant case does not affect the substantial validity of the application in as much as a copy of the decision bearing the correct name of the judge has been attached. The omission therefore can be tolerated under article 107 A (2) of the Constitution of the United Republic of Tanzania, 1977 without occasioning failure of justice.

Finally, Dr. Chama thinks that the two orders are not suitable to be joined together in one application by way of an *omnibus* application. I think he is not correct.

In **MOHAMED SALIMIN VS. JUMANNE OMARY MAPESA**, CIVIL APPLICATION NO. 103 OF 2014, the prayers combined together in one application were for extension of time to file an application for revision to prepare and lodge record of proceedings relative to the application and for amendment of the jurat for attestation. The Court of Appeal was saying that for the reason of the prayers being unrelated, the application was not maintainable. In **DAUDI LENGIYEU VS. DR DAVID E. SHUNGU**, CIVIL APPLICATION NO. 28 OF 2015, the Court of Appeal was saying that an application for revision being under the domain of three judges could not be joined together with an application for extension of time which could be heard by a single judge. The Court repeated the same position in **HAMIS JOHN VS. HALFAN JANDU MKUMBO**, CIVIL APPLICATION NO. 9 OF 2015 wherein it struck out an *omnibus* application on account that an application for stay of execution which is heard by three judges could not be joined together with an application for extension of time which could be heard by a single judge.

For the foregoing therefore, the preliminary objections are without merit and they are accordingly overruled.

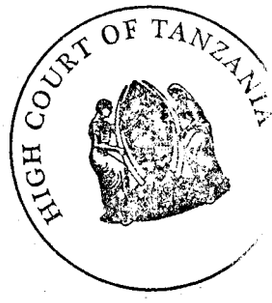
It is so ordered.

MAIGE.I

JUDGE

16/11/2018

Delivered in the presence of Mr. Mwita, for the applicant and Mr. Mchami, Advocate for the respondent this 16/11/2018.



MAIGE. I

JUDGE

16/11/2018