

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO. 146 OF 201

(C/F LAND CASE NO. 40 OF 2014)

BETWEEN

TOM MORIOTHE APPLICANT

VERSUS

**ATHUMAN HASSAN (Suing as an administrator of the estate of the
LATE HASSAN MOHAMED SIARA).....1st RESPONDENT**

WILFRED JUSTINE MOLLEL.....2ND RESPONDENT

AZANIA BANK LIMITED.....3RD RESPONDENT

RULING

23RD OCTOBER, 2018

T. MWENEMPAZI, J.

The applicant has brought this application for an extension of time within which to apply for leave to appeal to the Court of Appeal of Tanzania

against the judgement and decree of this Honourable court dated 19th day of September, 2016, leave to appeal to the Court of Appeal of Tanzania against the judgement and decree of this Honourable Court dated 19th day of September, 2016 and cost of application to abide by the result of the intended appeal. The application is made under the provisions of section 47(1) of the Land Disputes Courts Act, Cap. 216 R.E.2002, Section 5(1) (c) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 and Rule 10 and 45(a) of the Tanzania Court of Appeal Rules, 2009.

As observed above, this is an application for extension of time within which to apply for leave appeal to the court of appeal of Tanzania. Then, a second prayer is for leave to appeal to the court of appeal under section 47(1) of Land Disputes Courts Act, cap. 216 R.E.2002. The second prayer must be proceeded by the determination of the application for leave to enlarge time. So, the application for leave is contingent upon the court ordering for an enlargement of time in the first prayer.

It is however noted in the chamber summons that the applicant has cited Rule 10 of the Court of Appeal Rules, 2009 which provides as follows:

"10. The Court may, upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or

tribunal, for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended."

The Court is defined by Rule 3 as follows:

"Court" means the Court of Appeal of the United Republic of Tanzania established by the Constitution, and includes any division of that Court and a single Judge exercising any power vested in him sitting alone;

This clearly shows that the cited rule is not applicable for the purpose of the application of an extension of time to apply for leave to appeal in this court. The applicant has, however, submitted in the Written submission in support of this application that this court is vested with discretionary powers to grant an extension of time for an application for leave to appeal to the court of appeal under section 11 of the Appellate Jurisdiction Act, cap. 141 R.E. 2002. Despite this submission, the court is moved by way of chamber summons and an affidavit. An enabling law is cited in the

chamber summons. The statement in the written submission does not clear the wrong citation in the chamber summons.

On the point of enabling law in respect of the application for extension of time to apply for leave to appeal to the Court of appeal, the respondent has submitted that the application is incompetent as this court has not been properly moved by the applicant by citing a wrong provision of law. In the submission the respondent also concedes to the provisions of section 11(1) of the Appellate Jurisdiction Act, cap. 141 R.E.2002 as the proper provision conferring jurisdiction to the court in extension of time for leave to appeal. The problem however, is that the provision has not been cited in the chamber summons. The said provision reads: -

"(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"

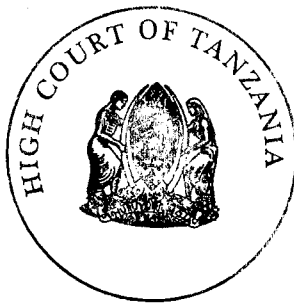
The applicant in this application has, however, cited Rule 10 of the Court of Appeal Rules of 2009 as the enabling for the application for extension of time. The 'Court' according to Rule 3 of the Court of Appeal Rules of 2009 is defined as the Court of Appeal of the United Republic of Tanzania established by the Constitution, and includes any division of that Court and a single Judge exercising any power vested in him sitting alone.

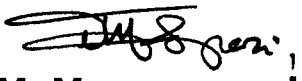
By any means this court being the High court cannot be enabled by the said Rule cited for the purpose of extension of time. It is only the Court of Appeal which is empowered to act on the said rule. However, section 11 of the Appellate Jurisdiction Act, Cap. 141 R.E.2002 is the right provisions for the application of extension of time by the High Court. It was held in the case of **Tanzania China Friendship Textile Co. Ltd versus Charles Kabweza & others**, [Civil Application No. 62 of 2015, Court of Appeal of Tanzania at Dar es salaam] that both the High Court and the Court of Appeal are vested with the power of extending the time to apply for leave to appeal.

Now, as this application is for the extension of time within which to apply for leave to appeal to the Court of Appeal of Tanzania against the judgement and Decree of this Honourable Court dated 19th day of September, 2016 and application for leave to the appeal to the Court of

Appeal of Tanzania against the said judgement and decree, the second prayer cannot stand where the first one has been rendered incompetent by a wrongful citation of the enabling law. I therefore strike out the whole application with cost.

It is so ordered




T.M. Mwenempazi

JUDGE

23RD OCTOBER, 2018