

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISCELLANEOUS LAND CASE APPLICATION NO. 55 OF 2018

(Arising from District Land and Housing Tribunal for Arusha at Arusha, Land Application No.284 of 2016, from Application No. 67 of 2009 in the District Land and Housing Tribunal for Arusha at Arusha)

MELKIORY MALLYA.....APPLICANT

VERSUS

ROSE PETER MASSAWE.....RESPONDENT

RULING

25TH SEPTEMBER, 2018

MWENEMPAZI, J.

The applicant is applying for an extension of time to file an appeal out of time against the decision of the District Land and Housing Tribunal of Arusha made by Hon. G. Kagaruki, Chairman of the Tribunal. The decision was made on the 2nd day of March, 2018 in Land Application No. 284 of 2016 regarding a Bill of Cost filed by the Decree Holder. The applicant, in order to justify the application for extension of time and or give an account for the delay he has sworn an affidavit to state the reasons. In his affidavit he states that immediately after the decision of the Honourable Chairman, he wrote a letter requesting to be furnished with the certified copies of

ruling and proceedings in order to enable him file an appeal. He never received them in time. He had to make a follow up of the proceedings for a considerable period time. He secured at first a copy of the ruling and proceedings on the 16th March, 2018. His appeal could not be accepted, due to lack of a drawn order. He had to follow up and was able to secure it on the 23rd April, 2018. Then, time had elapsed to be able to file an appeal within time. Hence this application.

The respondent's Attorney has raised a preliminary objection on two points as follows: -

1. That the application is none maintainable in law for being brought under a wrong provision of law.
2. The application is incurably defective for failure to comply with the court of appeal of Tanzania directives regarding jurat on the affidavit.

In the first limb of the preliminary objection, the learned counsel for the respondent argues that the source of this application is from the decision of the District Land and Housing Tribunal for Arusha at Arusha in the Bill of Costs Application No. 284 of 2016 which was decided in favour of the respondent herein. The Bill of Costs Applications are governed by the Advocates Remuneration Order, GN. 264 of 2015 under Order 55(1)-(4). If a party is aggrieved by the decision of a taxing master the law is to the effect that he may file reference to judge of the High Court under Order 7 (1); which reads as follows:

"any party aggrieved by a decision of the taxing officer, may file reference to a judge of the High Court."

This application is brought under the provisions of section 38(1) of the Land Disputes Courts Act, Cap. 216 R.E.2002. The provisions are concerned with appeal against the decision of the District Land and Housing Tribunal in its appellate jurisdiction on issues related to land. The Advocates Remuneration Order, 2015, GN. No. 263 of 2015 provides for matters related to taxation as provided for under Order 2 of the GN. No.263 of 2015. Order 2 of the Order provides as follows: -

"This Order shall apply to the remuneration of an advocate by a client in contentious and non-contentious matters, for taxation thereof and the taxation of costs between a party and another party in matters in the High Court and in courts subordinate to the High Court, arbitral tribunals and tribunals from which appeals lie to the Court of Appeal."

Obviously, it is not related with issues connected to land disputes as such in their substantive contents. It is, however, related to issues of taxation which was the subject of the Application titled 'Bill of Costs No. 284 of 2016, in respect of which the applicant is seeking an order for extension of time to file an appeal against it.

Now, if the law cited is wrong, the effect of it is to strike out the application. It was held in the case of **Robert Leskar versus Shibesh**

Abebe, Ar Civil Application No. 4 of 2006, Court of Appeal of Tanzania at Arusha(unreported) that: -

"it is a settled law in this country that a proceeding brought under wrong provisions of the law is incompetent and ought to be struck out. It is equally settled law that non-citation of the relevant provisions in the notice of motion the proceeding incompetent."

The first limb of the preliminary point of objection suffices to determine this matter. I see no need to deal with the second limb which, in my view, is not of importance now as the whole of the application is incompetent. The cited decision of the Court of Appeal provides us with the way forward. As in this application it is obvious that there is a citation of the wrong provision of law to move the court, the application is rendered incompetent. The remedy is to strike out. I therefore strike out this application. I give no order as to costs to reduce burden to the applicant who is an old man struggling to pursue justice.

It is ordered accordingly.

**SGD: T. M. MWENEMPAZI,
JUDGE
25TH September, 2018**



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


**J.F. NKWABI
DEPUTY REGISTRAR
ARUSHA**

28/09/2018