

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

LAND APPLICATION NO. 65 OF 2018

**THE REGISTERED TRUSTEES OF THE
FEDERATION OF THE KHOJA
ITHNA ASHERI JAMAATS OF AFRICA APPLICANT**

VERSUS

THE REGISTRAR OF TITLES 1st RESPONDENT

THE HON. ATTORNEY GENERAL 2ND RESPONDENT

THE NATIONAL HOUSING CORPORATION.....3RD RESPONDENT

Date of last Order: 11/10/2019

Date of Ruling: 08/11/2019

R U L I N G

MGONYA , J.

Before me is an Application by Chamber summons brought under the provision of **section 47 (1) of the Land Disputes Settlement Act Cap. 216 [R. E 2002]**.

The order sought herein is:

- a) ***This Honorable Court may be pleased to make an order that the Applicant be granted leave to appeal to the Court of Appeal of Tanzania against the***

whole of the decision of the High Court of Tanzania dated 21st day of August, 2018 Hon. Luvanda, J. in Misc. Land Appeal No. 1 of 2012;

- b) Costs of this Application be costs in the intended Appeal; and***
- c) Any other order (s) that the Honorable Court may deem fit.***

The same is accompanied by the Affidavit of the Applicant Masumbuko Roman Mahunga Lamwai respectively;

The origin of this Application is the Judgment of Hon. Luvanda J. in **Misc. Land Appeal No. 1 of 2012 delivered on 21st August 2018**. Further the points for determination to the Court of Appeal of Tanzania from the said Judgment is said by the Applicant's Counsel to be seen in **paragraph 9 (a) and (c)** of the Affidavit in record.

The Application was argued by way of written submission. Turning to the point of determination before this Court is when does the time begin to run against a dissatisfied person in matters relating to rectification of the Land Register under the Land Registration Act? And whether the decision on the objection

on limitation in **Misc. Land Appeal No. 1 of 2018** could be decided as a preliminary point.

Mr. Pongolela for the Applicant invited this Honorable Court to find the **paragraph 9 (a)** and **(c)** to be relevant points to be determined by the Highest Court of the Land during the Appeal.

On reply to the Application, Mr. Erick Mugisha learned State Attorney for the 1st and 2nd Respondent objected by firmly stating that the points by the Applicant do not qualify to be points of law to be appealed to the Court of Appeal and that the matter was time barred and from the order the matter was struck out hence the Applicant has room to lodge another fresh appeal before the Court seeking for his rights.

Now having gone through paragraphs **9 (a)** and **(c)** of the Applicant's Affidavit which tend to suggest points of law fit for determination by the Court of Appeal, I am only satisfied with the aforesaid points as mentioned above. The reason for the same is due to the fact that the said to amount to the points are inviting the Court of Appeal to ascertain and determine as to whether the decision by the High Court had properly been determined as to issues that had occurred. It is vested upon the Court of Appeal powers to ascertain as to whether the actions of the High Court

had properly been dealt with to amount to the decision of the High Court. In the event therefore, I proceed to find that the points of law as stated under **paragraph 9 (a) and (c)** of the Affidavit are fit for determination by the Court of Appeal.

In view of the above, this Court is hereby granting leave to the Applicant to appeal to the Court of Appeal in terms of the contents of **paragraph 9 (a) and (c)** of the Applicant's Affidavit.

In the upshot, **the leave is hereby granted.**

I make no order to costs.



L. E. MGONYA
JUDGE
08/11/2019

Court: Ruling delivered in chambers in the presence of Ms. Jackline Massawe, Advocate for the Applicant Ms. Emma RMA, this 08th day of November, 2019.



L. E. MGONYA
JUDGE
08/11/2019

