

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

MISC. LAND APPLICATION NO. 23 OF 2018

(Arising from Misc. Land Application No.52 of 2015 of the High Court of Tanzania at Shinyanga)

MALENYA MASANJA.....APPLICANT

VERSUS

NG'HONGE NTOBI.....1ST RESPONDENT

DADU MASANJA.....2ND RESPONDENT

Date of Last Order: 21/05/2020

Date of Ruling: 28/07/2020

RULING

C. P. MKEHA, J

Before me is an omnibus application in which the applicant has two prayers namely, extension of time for the applicant to lodge out of time an application on a certificate certifying that there is a point of law and subject to the grant of extension of time, the court be pleased to grant a certificate on point of law to the applicant. The chamber summons is supported by an affidavit of one Edina Aloyce who happened to be the applicant's advocate.

The same is countered by a joint affidavit of the two respondents. During hearing of the application, Mr. Kassim Mussa learned advocate represented the applicant. The respondents appeared in person. The application was argued by way of written submissions.

Submitting in support of the application, the learned advocate submitted that the former application applying for certificate on point of law, that had been timely made, was struck out by the court for being incompetent on 05/06/2018.

The learned advocate submitted further that, upon being supplied with the court's decision on 26/06/2018, he proceeded filing the present application the next day i.e on 27/06/2018. The decision intended to be appealed against was delivered on 04/06/2015.

In view of the learned advocate for the applicant, since when the impugned decision was delivered the applicant has been diligent in promptly taking actions aimed at challenging the said decision.

As to point of law, the learned advocate for the applicant submitted that there is an allegation of illegality of the proceedings as to the jurisdiction of the trial tribunal which determined the matter without regard to its pecuniary

jurisdiction. The learned advocate submitted that, the record of the trial tribunal indicates that the value of the disputed land was uncertain and that the jurisdictional issue went unseen before the appellate District Land and Housing Tribunal and this court as well. In view of the learned advocate for the applicant, the applications deserved being granted.

In their joint reply, the respondents who are lay persons in the filed of law were of the view that the applicant failed to observe the law and procedure of preferring his application before the court. The respondents simply invited the court to struck out the application for reasons of incompetence.

An important question that arises is whether or not the application is properly before the court in its present form.


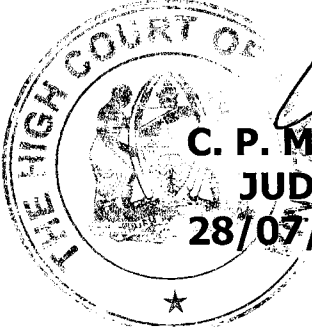
The respondents though lay persons were of the view that the applicant had failed to observe the law and procedure of preferring his respective applications. The applicant did not rejoin.

On one hand, the applicant is applying for extension of time to lodge out of time an application on a certificate of law. On the other hand, the applicant is applying for the actual certificate on a point of law. The matter originates from a Ward Tribunal. While the former application is provided for under the

Appellate Jurisdiction Act, the latter, is provided under section 47(2) of the Land Disputes Courts Act. Although good practice encourages omnibus application to avoid multiplicity of cases, the two applications/prayers can not be lumped up together in one application as it happened in the present case.

The considerations are different, while in the former application one looks for good cause of delay, in the latter one considers presence of actual point of law to be determined by the Court of Appeal. It is my holding that the application is incompetent for combining applications which ought to be sought in distinct applications. **See: Rutagatina C. L. Vs The Advocates Committee & Another, Civil Application No.98 of 2010, CAT, Dar es Salaam.** For the foregoing reasons the application stands struck out for being incompetent.

Dated at **SHINYANGA** this **28th day of July, 2020.**

C. P. MKEHA
JUDGE
28/07/2020