

**IN THE HIGH COURT OF TANZANIA**

**AT BUKOBA**

**LAND APPLICATION NO.1.OF 2018**

*(Arising from both Bukoba District Land and Housing Tribunal Land  
Application No. 106/2012 and High Court of Tanzania Land Appeal No.  
26/2015)*

**JOVIN MICHAEL ..... APPLICANT**

**(Administrator of Estate of Late Katunzi Simeo)**

**VERSUS**

**EFRAHIM GERUMAN ..... RESPONDENT**

**RULING**

24<sup>th</sup> -28<sup>th</sup> February, 2020

**BAHATI, J**

This ruling is in respect of a preliminary objection (PO) on point of law which has been raised by the learned counsel for the respondent, Aaron Kabunga. It aims at preliminarily challenging the applicant's application for leave to appeal to the Court of Appeal to challenge the judgment and decree of the High Court in Land Appeal No. 26/2015 by Bongole, J.

In objecting the present application, the respondent has lodged one ground that;

- 1. The application is irredeemably, incurably and incompetent for having been filed hopelessly out of time without seeking and obtaining leave of this court to file it albeit out of time.*

At the hearing of the PO, the applicant Mr.Jovin Michael was unrepresented while the respondent had the service of Mr.Frank Kaory John, learned Counsel. As it has been the practice of the Court, before dealing with the appeal, I had to dispose of the PO first. I therefore invited the parties to address the court on the same.

In support of the raised PO, the respondent's learned counsel; Mr.Frank Kaory John requested the court to dismiss the application with costs under section 3(1) of the Law of Limitation Act, Cap.89. He further submitted that the judgement was delivered on 31 /07/2017 and this application was filed on 19/1/2018, which is six months after. Hence this application was filed out of time.

In reply, the applicant in person submitted that, the PO raised is completely hopeless since the application was filed in time and not as alleged by the learned advocate for the respondent. According to him, on 1/8/2017 the Notice of Appeal to the Court of Appeal was filed in time as allowed by law. He referred the Court to receipt No.19374055 to cement his argument.

Upon considering the submissions by both parties, I agree with the counsel for the respondent, that the applicant has filed the application out of time.

It is a settled principle of law under Section 47(1) of the Land Disputes Courts Act, Cap 216 that:

*“A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may, with leave of the High Court appeal to the Court of Appeal. ”*

The Court is of the firm view that, a brief exposition of the law governing leave to appeal to the Court of Appeal is relevant here. Per the law, the limitation period for pursuing of an appeal of this nature is 30 days from the date of judgment. A copy of judgment being an essential element for the intended appeal, the time, for the purpose of limitation, starts running from the date when a copy of the same was availed to the prospective applicant/appellant. This is in terms of section 19(2) of the Law of Limitation Act, Cap.89. As the copy of the judgment was ready for collection on 31<sup>st</sup> July, 2017, this application being filed on 19<sup>th</sup> January, 2018, it was not within a period stipulated under the law.


In principle therefore, the applicant was not within the statutory time. Also section.3 (1) of the Law of Limitation Act, Cap.89 provides that:

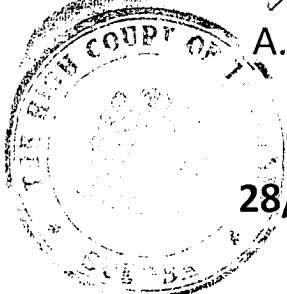
*‘ ‘Subject to the provisions of this Act, every proceeding described in the first column of the schedule to this Act and which is instituted after the period of limitation prescribed thereof opposite thereto in the second column , shall be dismissed whether or not limitation has been set up as a defence.”*

From the foregoing reasons therefore, the application is hereby dismissed without costs, given all circumstances of this matter and the status of the applicant as a lay person who cannot afford legal services.

Right of appeal explained.

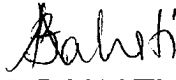
It is so ordered.

  
A.A. BAHATI  
JUDGE  
28/02/2020



**Court:**

Ruling delivered in the presence of the applicant Jovin Michael and also in the presence of respondent Efrahim Geruman accompanied with his advocate Mr. Frank Kalori John this 28/02/2020.

  
A.A. BAHATI  
JUDGE  
28/02/2020

