

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

MISC. LAND APPLICATION NO. 60 OF 2018

(Arising from Land Application No. 29/2014 of DLHT at Bukoba & Misc. Land Application 15/2017 of the High Court at Bukoba)

LEOCADIA EUSTADI -----APPLICANT

VERSUS

CLAVERY BUYOMBO -----RESPONDENT

RULING

Date of last order 17/02/2020

Date of ruling 17/02/2020

N.N. Kilekamajenga, J.

The applicant, one Leocadia Eustadi, applied to this Court for an order for extension of time to file an appeal out of time. The application was made under **Section 41 (1) of the Land Disputes Courts Act** as amended by the written Laws (Miscellaneous Amendments) Act No. 2 of 2016. In response the respondent filed a counter affidavit and raised a point of preliminary objection thus:

"This Honourable Court has not been properly moved for failure to cite proper provision in the chamber summons".

The parties finally appeared to argue the point of preliminary objection. The applicant appeared in person while the respondent was represented by the

learned counsel, Mr. Mwitwa Makabe. During the oral submission, the counsel for the respondent argued that this Court has not been properly moved as the application has been brought under the wrong provisions of the law. He argued that the application was brought under **Section 41 (1) of the Land Disputes Courts Act** as amended by written Laws (Miscellaneous Amendments) Act No. 2 of 2016 while the proper provisions of the Law is **Section 41 (2) of the Land Disputes Court Act** (Miscellaneous Amendments) act No. 2 of 2016. He referred the Court to the case of **Salum Nhumbili v. Republic, Criminal Appeal No. 04 of 2013** to show the effect of not citing the proper provision of the law. He further informed the Court that this is the second application to be struck out on the same point of failure to cite the proper provisions of the law. He argued further that the advocate who prepared this application knew the proper provision of the law but ended-up citing the wrong section. He urged the Court to strike out the application with costs.

On the side of the applicant who was not represented, her submission was just brief. She urged the Court not to strike out the application because she is not the one who prepared the chamber summons.

After considering the submissions from the parties and perusing further the Court file, I have realized that the applicant filed the first application for extension of time in 2017. The initial application was brought under **Section 38 (1) of the Land Disputes Court Act, Cap. 216 R.E 2002**. The same

application was struck out after the judge upheld the point of preliminary objection raised by the respondent. The judge directed further that the proper Section to be applied/cited is **Section 41 (2) of the Land Disputes Court Act as amended by (Miscellaneous Amendments) Act No. 2 of 2016**. Very unfortunately, the instant application was brought under **Section 41 (1) of the same Act** which does not move this Court to hear the matter on merit. I have considered the prayer by the applicant who urged the Court not to dismiss the instant application. I fairly understand the pain of going back and forth on the same application for the faults of a negligent advocate who never cared to read the ruling delivered by my learned brother Hon. Justice Mlacha who clearly stipulated the relevant provision that accommodates this kind of application. However, my hands are tied-up to my oath of the office and I am obliged to dispense justice without fear or favour.


In conclusion, the instant application is brought under the wrong provisions of the law hence this Court is not properly moved to hear the application. I again reiterate that, the application should be brought under **Section 41 (2) of the Land Disputes Courts Act**, as amend by the Written Laws (Miscellaneous Amendments) Act No. 2 of 2016 which provides as follows:

"41 (2) An appeal under submission (1) may be lodged within forty five days after the date of the decision or order.

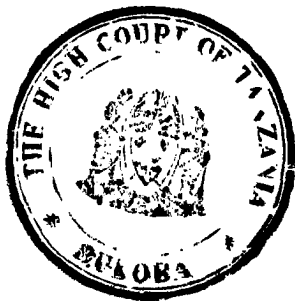
Provided that, the High Court may, for good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days".

Therefore, the instant application is incompetent before this Honourable Court for failure to cite the relevant provisions of the law. The application is hereby struck out with costs. Order accordingly.

Dated at Bukoba this 17th February, 2020.


N. N. Kilekamajenga
JUDGE
17/02/2020

Court: Ruling delivered in the presence of the applicant, the respondent and the counsel for the respondent. Right of appeal explained to the parties.




N. N. Kilekamajenga
JUDGE
17/02/2020