

**IN THE HIGH COURT OF TANZANIA
(MAIN REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 88 OF 2018

(Arising from Ruling of the High Court Main Registry in Misc. Civil Application No. 06 of 2018)

FRANKLIN FREDERICK SUMAYE.....APPLICANT

VERSUS

**AUTHORISED LAND OFFICER,
KINONDONI MUNICIPALCOUNCIL.....1st RESPONDENT**

**MINISTRY OF LANDS, HOUSING
AND HUMAN SETTLEMENT.....2nd RESPONDENT**

THE ATTORNEY GENERAL.....3rd RESPONDENT

RULING

13/11/2019 & 20/02/2020

Masoud, J.

The applicant is aggrieved by the decision of this court which dismissed his application for prerogative orders with costs. The reason for the dismissal was that the application for prerogative orders was filed on 23/02/2018 after the expiry of fourteen (14) days from the date (i.e 16/06/2017) on which the leave to file the application for prerogative orders was given.

It is instructive at the outset to note that a previous application for prerogative orders filed on 29/06/2017 after the granting of the leave was struck out by Khaday J. on 25/10/2017 for wrong citation of enabling provision of law.

As the applicant is intending to appeal to the Court of Appeal against the above mentioned ruling, he filed the instant application for leave to appeal to the Court of Appeal. The application was made under section 5(1)(c) of the Appellate Jurisdiction Act, cap. 141 R.E 2002 and was supported by an affidavit of Mr Mpale Mpoki, the applicant's counsel, disclosing reasons why the application should be granted.

The reasons mentioned in the affidavit are that, the applicant has lodged notice of appeal following the delivery of the impugned decision, applied for copies of the ruling, order and proceedings for purpose of preparing a record and memorandum of appeal, and that there are points of law involved which need to be determined by the Court of Appeal.

The affidavit in support of the applicant itemized the points of law which the applicant wishes the Court of Appeal to determine. They are as

follow. First, whether the provisions of the Law of Limitation Act, cap. 89 R.E 2002 in respect of the exclusion of certain period of time does not apply to application for prerogative orders.

The second point is whether section 93 of the Civil Procedure Code Cap. 33 R.E 2002 applies to the application for extension of time to file an application for prerogative orders. And third point is whether the exclusion of certain period of time provided under the Law of Limitation Act, cap. 89 R.E 2002 is not an automatic right of the party.

The application was opposed by the respondents who filed a counter affidavit which was sworn by Mr Denis Kamara, State Attorney for the respondents. The counter- affidavit essentially disputed the applicant's averments on the existence of points of law for determination by the Court of Appeal.

In particular, all the points of law raised as constituting grounds for the intended appeal to the Court of Appeal were denied. It was in such respect contended that the applicant rushed to file the application for prerogative orders out of time without first seeking enlargement of time.

The application was, by consent, argued by filing written submissions. The counsel for both sides duly complied with the filing schedule as ordered by the court on 30/09/2019 and 13/11/2019. It is instructive to say that the submissions of the applicant's counsel expounded on the affidavit.

The applicant's counsel reinforced his submissions in chief by citing **Yahaya Rajabu vs Ibrahim Salum Tahfif aand Ahmed Salum Tahfif**, Misc. Land Application No. 4 of 2009, and **Holtan Builders Ltd vs Cool Care Services Ltd**, Misc. Application No. 700 of 2017 (unreported) in relation the duty of this court in applications for leave to appeal to the Court of Appeal. It was emphasized that all the necessary conditions for purposes of appealing to the Court of Appeal had already been fulfilled. The only condition left was obtaining leave of this court as is required by the law.

Conversely, the counsel for the respondents brought the attention of this court to section 9 of the Written Laws (Miscellaneous Amendments) Act 2018. He alleged that the provision removed the requirement for leave to appeal to the Court of Appeal for matters originating from the High Court.

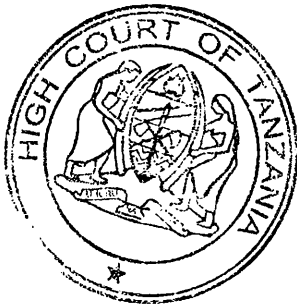
Besides the above submissions, the learned State Attorney raised a preliminary issue in his submission in reply without any prior notice. The same was to the effect that the applicant sued a wrong party, that is, instead of suing Kinondoni Municipal Council, he sued the Authorised Land Officer, Kinondoni Municipal Council. As this point was all along not raised and was not party of the proceedings, I am prepared not to treat it as an issue at this stage.


The submissions of both counsel were considered in the light of the affidavit supporting the application. Apart from the preliminary issue improperly raised by the respondents' State Attorney which I have herein above declined to sustain, it suffices to say the remaining part of the submissions did not oppose the application.

Even if I were to take the respondent's counter affidavit seriously, I would be prepared to hold that it demonstrates that there is an arguable case on the points of law shown. I have had in this respect regard to the contents of the counter affidavit which disputed the existence of the allegation on the existence of points of law.

In the results and from the foregoing, the application for leave to appeal to the Court of Appeal is hereby granted. Costs shall follow events.

It is ordered accordingly.




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B. S. Masoud
Judge
20/12/2019