

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

MISC. LAND APPLICATION No. 12 OF 2020

*(Arising from the Decision of Maswa district Court in Civil Appeal No. 7/2019 originating
from Nyalikungu Primary court in Civil case No 10 of 2019)*

MOHAMMED HASSAN MUSSA.....APPLICANT

VERSUS

JUMA MOREGA TAGENDA.....RESPONDENT

RULING

Date of the last Order: 23^d September, 2020

Date of the Judgment: 9th October, 2020

MKWIZU, J.:

By chamber summons, supported by an affidavit, applicant, Mohammed Hassan Mussa filed an application for extension of time to file appeal out of time. The application was made under Rule 3 of the Civil Procedure (Appeals in Proceedings Originating in Primary courts) rules, 1963, GN No. 312 of 1964 and section 14 (1) of the Law of Limitation Act.

Subsequently, the respondent through the services of AK Law Chambers, filed a notice of preliminary objection to the effect that:

"This Honourable Court has no jurisdiction to hear and determine the purported applicant's application".

Parties appeared before me for hearing of the preliminary objection on 23/9/2020. Mr. Jacob Somi learned advocate represented the applicant while Mr. Audax Constantine represented the respondent.

Arguing the preliminary objection, Mr. Audax submitted that, this application requests for extension of time to file appeal against the decision of the District Court in Civil Appeal No. 7/2019. Mr. Audax explained that, the appellant had appealed to this court against the same decision in Civil appeal No 18 of 2019 which was dismissed by the Resident Magistrate with extended jurisdiction for being time barred. He said, dismissal order under section 3 (1) of the Law of limitation Act bars a part from applying for extension of time to file appeal against the same decision whose appeal was dismissed. The remedy available for him is to appeal, file revision to the court of appeal or review. He cited the case of **East African development Bank V. Blueline Enterprises Limited**, Civil Appeal No 101 of 2009 to bolster his position.

In response, Mr. Somi readily conceded to the preliminary objection raised. He requested for the striking out of the application with no order as to costs.

Undeniably, applicants' application for extension of time came after Resident Magistrate with extended jurisdiction had dismissed under section 3(1) of the Law of Limitation Act an appeal against the decision sought to be impugned if this application is granted. This is contrary to the well-established principle of the law under the cited case of **East African development Bank V. Blueline Enterprises Limited** (Supra) where it was stated that once the applicant had been caught in the web of section 3 (1) of the Law of Limitation Act, the only remedy available to the applicant after the dismissal order is to appeal to the Court of Appeal against the dismissal order. The Court said, I quote:

"Applying the principles discerned from the above authorities, it follows that once an order of dismissal is made under section 3(1) it is not open to an aggrieved party to go back to the same court and institute an application for extension of time. The remedy is to seek review before the same court or to lodge an appeal or a revision before the Higher

Court. The rationale is simple. That is, as far as the court is concerned the issue of time limitation has been determined. So, the party cannot go back to the same court on the same issue..." (Emphasis added).

Consequently, the application for extension of time before me is incompetent for the above reason. It is hereby struck out. As usual costs should fall the events

Order accordingly.

DATED at SHINYANGA this 9th day of October, 2020



E.Y. MKWIZU
**E.Y.MKWIZU
JUDGE
9/10/2020**