THE UNITED REPUBLIC OF TANZANIA
JUDICIARY

IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA

MISC. LAND APPLICATION NO. 89 OF 2017
(From the District Land and Housing Tribunal for Kyela at Kyela in Land Application No. 31 of 2016. Originating from Land Application No. 13 of 2016 in the District Land and Housing Tribunal for Kyela)

NSAJIGWA KABENGA KAISI.....APPLICANT

VERSUS

TIMOTHI SHAURI.....1ST RESPONDENT
BEATRICE KAPALILA.....2ND RESPONDENT
MOFATI MWANDEMBWA.....3RD RESPONDENT

RULING

Date of Hearing: 27/11/2019
Date of Ruling : 20/02/2020

MONGELLA, J.

The Applicant is seeking before this Court for extension of time within which to lodge an appeal out of time against the decision of the District Land and Housing Tribunal for Kyela (Tribunal) in Land Application No. 31 of 2016. The application is brought under the proviso to section 41(1) of Cap 216 as amended by the Written Laws (Miscellaneous Amendments) Act No. 2 of 2016 and is supported by the affidavit of one Mary L. Mgaya, the Applicant's Advocate. The application was argued by written

submissions. However, it was only the 1st Respondent who submitted his written submissions therefore the matter shall proceed ex parte against the 2nd and 3rd Respondents.

In the affidavit as well as in her written submissions, Ms. Mgaya contended that the Applicant is seeking for extension of time to appeal against the ruling of the Tribunal in Land Application No. 31 of 2016 which dismissed his application for setting aside the dismissal order issued by the Tribunal in Land Application No. 13 of 2016. The decision was pronounced on 2nd June 2017. The main reason she advanced for the delay in filing the appeal timely is that the Tribunal delayed in supplying them with necessary records despite seriously following up on them. She said that it was on 11th August 2017 when they were supplied with the said records. Ms. Mgaya pointed on the manner in which Land Application No. 13 of 2016 was handled leading to the dismissal and contended that the right to be heard was totally infringed thereby impairing the substantive rights of the Applicant on the land in dispute.

The 1st Respondent who represented himself first raised a legal issue to the effect that this Court has not been properly moved by the Applicant. He argued that the Applicant's application is brought under section 41 (1) proviso thereto of the Land Disputes Courts Act, as amended by the Written Laws (Misc. Amendments) Act, No. 2 of 2016. However this provision does not deal with issues of extension of time as prayed by the Applicant. He argued that the application has been made under a wrong provision of the law thus incompetent before this Court.

Arguing on the merits of the application, the Respondent argued that extension of time may be granted where there is sufficient cause. He contended that the Applicant took eighteen days to apply for the necessary documents for lodging his appeal. He argued further that the ruling in respect of application No. 31 of 2016 was certified on 14th July 2017 and the Applicant made payment to obtain the same on 11th August 2017 and filed this application on 29th August 2017 thereby delaying for eighteen days from the date of obtaining the copy of the ruling. He contended that the Applicant's application is baseless as he has failed to account for each day of the delay. In support of the application he cited the case of ***Karibu Textile Mills Limited v. Commissioner General (TRA)***, Civil Application No. 192/20 of 2016 (unreported) in which the Court of Appeal ruled that every day of the delay must be accounted for. He added that by failure to explain why he delayed for eighteen days after obtaining the copy of ruling the Appellant has failed to manifest diligence in taking steps. To this effect he cited the case of ***Dr. Ally Shabhay v. Tanga Bohora Jamaat*** [1997] TLR 305 whereby it was held that "*those who come to courts of law must not show unnecessary delay in doing so; they must show great diligence*." He concluded that the delay was not caused by the Tribunal but rather the Applicant himself and urged the Court to dismiss the application for lack of merits.

Ms. Mgaya basically rejoined on the issue of citation of wrong provision raised by the Respondent. She argued that the law applied by the Applicant is the same law applicable and the section cited reflects the relief sought by the Applicant. She contended that the slighter error, if

any, is just an inadvertently misquotation of the subsection. That instead of citing section 41 (2) the Applicant cited section 41 (1) of the Land Disputes Courts Act, Cap 216 R.E. 2002 as amended by the Written Laws (Misc. Amendment) Act, No. 2 of 2016.

Ms. Mgaya further argued that vide Article 107A (1) (e) of the Constitution the Judiciary is insisted to dispense justice without being tied up by technical issues which may obstruct the dispensation of justice. She contended that it is therefore improper to say that the cited section has nothing to do with the reliefs sought by the Applicant, on the basis that the err committed does not, in any way affect or alter the jurisdiction of this Hon. Court to grant the orders sought. In support of her argument she cited a decision of this Court in ***Alliance One Tobacco and Two Others v. Mwajuma Hamisi and Two Others***, Miscellaneous Civil Application No. 803 of 2018 (unreported) in which Mlyambina, J. dealing with a situation similar to the case at hand ruled that:

> *"It is the current law of the Land that Courts should uphold the overriding objective principle and disregard minor irregularities and unnecessary technicalities so as to abide with the need to achieve substantive justice. That proposition of the law is well reflected in the provision of section 6 of the Written Laws Miscellaneous Amendment Act No. 3 of 2018."*

After considering the rival submissions from both parties I observe as follows:

The Applicant has moved this Court for orders of extension of time through the proviso to section 41(1) of Cap 216 as amended by the Written Laws

(Miscellaneous Amendments) Act No. 2 of 2016. Section 41 (1) confers jurisdiction to the High Court to hear appeals, revisions or similar proceedings in respect of decisions emanating from the District Land and Housing Tribunal exercising original jurisdiction. This provision does not bear a proviso as wrongly cited by the Applicant. The Application for extension of time is thus governed under the proviso to section 41 (2) of Cap 216 as amended by the Written Laws (Miscellaneous Amendments) Act No. 2 of 2016. By citing proviso to section 41 (1) instead of proviso to section 41 (2) Ms. Mgaya argued that it was a slighter error, an inadvertently misquotation of the subsection. She urged the Court to be guarded by the overriding objective as envisaged under Article 107A (1) (e) of the Constitution of the United Republic of Tanzania. She as well sought for this Court to be persuaded by a decision of this Court in ***Alliance One Tobacco and Two Others v. Mwajuma Hamisi and Two Others*** (supra).

In my considered opinion, the Applicant has cited a non-existent provision of the law as there is no proviso to section 41 (1). The highest Court of this land has already settled the position regarding wrong citation or non-citation of the relevant provision of the law in applications. It has settled a position that such omission is a technicality that cannot be cured by invoking Article 107A of the Constitution which carries the spirit of the overriding objective relied upon by Ms. Mgaya. In ***China Henan International Co-operation Group v. Salvand K.A. Rwegasira*** (2006) TLR 220 the CAT ruled:

> *"The omission to cite the proper provision of the rule relating to reference or citing a wrong and inapplicable rule in support of*

the application is not a technicality falling within the scope and purview of Article 107A(2)(e) of the Constitution."

In ***Anthony J. Tesha v. Anita Tesha***, Civil Appeal No. 10 of 2003 (unreported) the CAT at page 5 also held:

"In the Chamber Application he merely cited section 5 of the Appellate Jurisdiction Act, 1979. He did not cite the subsection and the paragraph...This Court has said a number of times that wrong citation of an enabling provision of the law or non-citation renders an application incompetent...Here mere citation of section 5 without indicating the subsection and the paragraph is tantamount to non-citation."

Though CAT was dealing with the application of the Appellate Jurisdiction Act and the CAT Rules, still a leaf can be borrowed from these decisions as they establish legal principles regarding proper citation of provisions of the law to move the court in applications. Ms. Mgaya cited the case of ***Alliance One Tobacco and Two Others*** (supra). However, I find the case distinguishable to the circumstances in the case at hand. In this case the Court was dealing with a preliminary objection raised prior to the hearing of the main application whereby the Court got the chance to allow the Applicant to amend the provision wrongly cited in the chamber summons in hand writing so that the matter could proceed to hearing. It is unfortunate that this issue was brought by the Respondent at the stage of hearing by written submissions whereby there are no chances of amending the chamber summons.

Considering the observation I have made above, I find the Applicant's application incompetent before this Court for being brought under a wrong provision of the law and for the reasons stated above the same cannot be cured by overriding objective. Consequently I struck out the application with costs.

Dated at Mbeya on this 20th day of February 2020.

L. M. MONGELLA
JUDGE
20/02/2020

Court: Ruling delivered in Mbeya in Chambers on this 20th day of February 2020 in the presence of Ms. Rehema Mgeni, learned Advocate, holding brief for Ms. Mary Mgaya, Advocate for the Applicant.

L. M. MONGELLA
JUDGE
20/02/2020