

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

MISCELLANEOUS LAND CASE APPLICATION NO. 5 OF 2021

HAMISI MDIDA..... 1ST APPLICANT

SAID MBOGO2ND APPLICANT

VERSUS

THE REGISTERED TRUSTEES OF ISLAMIC

FOUNDATION.....RESPONDENT

RULING

Date: 02/03/2022 & 11/03/2020

BAHATI SALEMA, J.:

The applicants herein named Hamisi Mdida and Said Mbogo preferred this application under Section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019], Section 47 (2) of the Land Disputes Courts Act Cap 216 [R.E 2019] and Rule 46 (1) of the Tanzania Court of Appeal Rules, 2009 seeking an order of this court extending the time to apply for leave to appeal to the Court of Appeal against the decision of this Court in Land Appeal No. 41/2015, grant of leave to appeal to the Court of Appeal and costs of this application be provided for.

The application is supported by an affidavit sworn by the applicant's learned counsel Mr. Musa Kassim.

When the application was called up for hearing, Mr. Mussa Kassim appeared for the applicants, whereas Mr. Amos Gahise appeared for the respondent.

Submitting in support of the application, Mr. Kassim stated that, the applicants managed to lodge an appeal to the Court of Appeal of Tanzania but it was declared incompetent for having a defective certificate of delay issued by the registrar of this Court.

He added further that this had already granted the applicant leave to file a notice of appeal out of time and now they are praying to this court to extend the time to apply for leave and, subsequent to that extension, grant of leave to appeal to the court of appeal. To support his prayers, Mr. Musa cited a number of cases, including *Fortunatus Masha vs. William Shija and Another [1997] TLR 154* and *Bank M (T) Limited vs. Enock Mwakyusa Civil Application No. 520/18/2017 CAT at Dar es salaam*.

In reply, Mr. Amos Gahise conceded to the application and stated further that, since the delay was attributed by the court itself, he prayed the court not to award costs for this application.

Before embarking on the prayers made by the applicant, I find it appropriate to go over the history that led to the birth of this application, which runs as follows;

On 04/12/2015 the respondent Registered Trustees of Islamic Foundation filed in this Court Appeal No. 41/2015 against the two applicants Hamis Mdida and Said Mbogo. Upon hearing of the appeal, the court allowed the appeal and reversed the decision of the District Land and Housing Tribunal.

Dissatisfied, the applicants lodged Miscellaneous Land Application No. 75/2016 seeking a grant of leave to appeal to the court of appeal of Tanzania. Upon a full hearing of the application, the court denied his prayers and the application was dismissed for that reason.

Still dissatisfied, the applicants lodged an appeal to the Court of Appeal of Tanzania seeking reversal of the ruling of this court delivered by Rumanyika J in Miscellaneous Land Application No. 75/2016 refusing them leave to appeal to the Court of Appeal of Tanzania. The Court of Appeal of Tanzania allowed the appeal by setting aside the High Court's refusal of leave to appeal and substituting it for leave to appeal.

From there, the applicants successfully lodged an appeal before the Court of Appeal, but the appeal ended up being struck out for being

incompetent and for being outside the prescribed time of sixty days, contrary to Rule 90 (1) of the Court of Appeal Rules.

Now, the appeal having been struck out, the applicants have approached this court for a second time, seeking an extension of time to apply for leave and, subsequent to that, an extension of time grant of leave to appeal to the Court of Appeal of Tanzania. Though the respondent conceded to the application, the history of this case has reminded me of a decision of this court in ***Bibi Kisoko Medard vs. Minister for Lands, Housing and Urban Settlements and another*** [1983] TLR 250 that: -

"In a matter of judicial proceedings, once a decision has been reached and made known to the parties, the adjudicating tribunal thereby becomes functus officio."

Again in ***Tanzania Telecommunication Company Ltd & Others vs Tri Telecommunication Tanzania Ltd Civil Revision No. 62 of 2016 CAT at Dar es salaam*** the court observed that;

"In the case before us, we think the order of the Court of 10.3.2004 in Civil Revision No. 112 of 2003 dismissing the application finally disposed of the application for revision of the High Court proceedings. At this stage, to bring back the same proceedings seeking revision, could, we think, render the Court functus officio."

With regard to the two cases cited above, it is crystal clear that this court became *functus officio* from entertaining this application rightly from 16th September 2016 when Rumanyika J finally determined Application No. 75/2016 by refusing to grant leave to appeal to the Court of Appeal. For this, I find myself unable to entertain the same application that has already been fully determined by my colleague Judge.

Moreover, this court denied the applicants' leave to appeal to the Court of Appeal, but they succeeded in obtaining leave through appeal. Now, for me to make another decision on the same matter that the Court of Appeal had earlier granted, it would be like challenging the decision of honourable Justices of Appeal. It is my understanding that, since the Court of Appeal had already endorsed the proposed grounds for appeal, the applicants ought to have applied for an extension of time to lodge an appeal, not for leave, because the Court of Appeal had already granted them leave.

In the event, the application is dismissed with cost.

Order accordingly.




A. BAHATI SALEMA

JUDGE

11/03/2022

Ruling delivered under my hand and Seal of the court in
Chamber this 11th day March, 2022 in the presence of both parties.



A. BAHATI SALEMA

JUDGE

11/03/2022

Right to appeal is fully explained.



A. BAHATI SALEMA

JUDGE

11/03/2022

