

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

**MISC. CIVIL APPLICATION NO. 3 OF 2021**

*(Arising from the judgement of the High Court of Tanzania at Musoma (Hon. J.R. Kahyoza, J.) delivered on 19<sup>th</sup> August, 2020 in Miscl. Land Appeal No. 44 of 2020, arising from the District Land and Housing Tribunal for Mara at Musoma in Land Appeal No. 110 of 2019 and originating from Sirorisimba Ward Tribunal in Land Case No. 3 of 2017)*

**NDEGE CHACHA ..... APPLICANT**

**VERSUS**

**MAGORI KIHENGU ..... RESPONDENT**

**RULING**

*15<sup>th</sup> and 15<sup>th</sup> March, 2021*

**KISANYA, J.:**

The applicant's appeal before this Court was dismissed on 19<sup>th</sup> August, 2020. He was aggrieved and resolved to prefer an appeal to the Court of Appeal. In so doing, he lodged the notice of appeal to the Court of Appeal on 17<sup>th</sup> September, 2020. Since the impugned decision was made by this Court while exercising its appellate jurisdiction, the applicant has lodged this application requesting for leave to appeal to the Court of Appeal on a point of law. His application is predicated

under section 5(1) (c) of the Appellate Jurisdiction Act [Cap. 141, R.E. 2019], Rule 45 (a) of the Court of Appeal Rules, 2009 and section 47(1) and (2) of the Land Disputes Courts Act [Cap. 216, R.E. 2019] (the LDCA).

While I was preparing for the hearing of this matter I noticed that the following issues of law pertaining to the competence of this application:

- (a) That, the application for leave to appeal was not filed within 30 days of the impugned decision as provided for under rule 45(a) of the Court of Appeal Rules.
- (b) That, the intended appeal to the Court of Appeal originates from the Ward Tribunal. However, the applicant has not sought for a certificate from this Court to certify that there is point of law involved in the intended appeal as provided for under section 47(3) of the LDCA.

In view thereof, when this matter was placed before me for hearing today, I probed the parties to address me on the competence of this application. The hearing proceeded in the presence of the applicant

who appeared in person and in the absence of the respondent who was reported to have refused receipt of summons.

The applicant being a lay person had nothing to submit in respect of the above stated issues. He just told the Court that he believed that the application was lodged in time after receiving the copy of judgment on 4<sup>th</sup> December, 2020. As regards the second issue, the applicant blamed the lawyer who drafted the Chamber Summons for failing to indicate that he was asking for the certificate on point of law involved in the intended appeal. He therefore asked for leave to amend the Chamber Summons.

Having heard the applicant's submissions, I will proceed to determine the competence of this matter.

I have stated herein that the applicant has asked this Court to grant him leave to appeal to the Court of Appeal. This is also confirmed by the enabling provisions cited in the Chamber Summons namely, section 5(1) (c) of the Appellate Jurisdiction Act [supra], Rule 45 (a) of the Court of Appeal Rules 2009 and section 47(1) and (2) of the LDCA, which provide for leave to appeal to the Court of Appeal.

This being a land matter, the applicable provision is section 47(2) of the LDCA. According to that provision, a party aggrieved by the decision of this Court in the exercise of its appellate or revisional jurisdiction appeals to the Court of Appeal after obtaining leave to appeal from this Court. The LDCA does not specify the time within which the application for leave to appeal should be made. That matter is taken care by rule 45(a) of the Court of Appeal Rules, 2009 as amended by G.N. No. 362 of 2017 which reads:

*"In civil matters: -*

*(a) notwithstanding the provisions of rule 46(1), where  
an appeal lies with the leave of the High Court,  
application for leave may be made informally, when the  
decision against which it is desired to appeal is given, or  
**by chamber summons according to the practice of  
the High Court, within thirty days of the decision;**  
(Emphasize supplied).*

In the light of the above cited provision, where the leave to appeal is granted by the High Court and the application for leave is not made informally when the impugned decision is given, formal application is

required to be made within thirty days of the said decision. There is no requirement of attaching the copy of the decision subject to appeal. Such requirement applies where the appeal lies with the leave of the Court of Appeal.

The decision against subject to this application was delivered on 19<sup>th</sup> August, 2020. In terms of rule 45(a) of the Court of Appeal Rules (supra), the applicant ought to have filed the application for leave to appeal on or before 18<sup>th</sup> September, 2020. However, the present application was 7<sup>th</sup> January, 2021. That was more than 90 days from the date of judgment to be challenged and hence, out of time prescribed by the law.

Furthermore, section 47(3) of the LDCA requires the applicant whose appeal to the Court of Appeal originates from the ward tribunal to apply from the High Court for a certificate on point of law involved in the intended appeal. An appeal to the Court of Appeal cannot stand unless the High Court certifies the point(s) of law involved in the intended appeal. This stance was taken in the case of **Magige Nyamoyo Kisinja Vs Merania Mapambo Machiwa**, Civil Appeal No. 87 of

2018, CAT at Mwanza (unreported), where the Court of Appeal cited with approval its decision in **Dovina N. Nkumwa vs. Edwin David Hamis**, Civil Appeal No. 53 of 2017 (unreported) that:

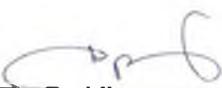
*"We therefore hold that this appeal must be dismissed because the High Court has not certified any point of law involved in this appeal."*

Reading from the Chamber Summons in the case at hand, I find no where the applicant sought for this Court to certify that there are point(s) of law involved in the intended appeal to the Court of Appeal. Such relief was sought in the affidavit. It is the practice and settled law that, the reliefs have to be prayed in the Chamber Summons and the affidavit is confined to facts which the deponent is able to prove. In the circumstances, even if leave to appeal is granted, it serves no purpose as the applicant has not prayed for the certificate on point(s) of law to be considered by the Court of Appeal.

For the reasons I have endeavored to discuss, I find the present application incompetent before the Court. The law is settled that, incompetent matter cannot be amended as requested by the applicant.

Therefore, I am inclined to as hereby strike out this application. Costs are not awarded because the respondent defaulted to appear.

DATED at MUSOMA this 15<sup>th</sup> day of March, 2021.



E. S. Kisanya  
JUDGE