

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(SONGEA DISTRICT REGISTRY)**

**AT SONGEA**

**MISCELLANEOUS LAND CASE APPLICATION NO. 12 OF 2020**

*(Arising from Land Appeal No. 13 of 2019 of the High Court at Songea)*

**KENEDY MHORO ..... APPLICANT**

**VERSUS**

**CLEMENTINA KOMBA ..... 1<sup>ST</sup> RESPONDENT**

**JOHN MKINGA ..... 2<sup>ND</sup> RESPONDENT**

*Date of last hearing; 18/02/2021*

*Date of Ruling; 22/04/2021*

**I. ARUFANI, J**

**RULING**

The applicant, Kenedy Mhoru filed in this court the application at hand seeking for leave to appeal to the Court of Appeal of Tanzania against the judgment of this court delivered in Land Appeal No. 13 of 2019. The application is made under section 5(1) (c) of the Appellate Jurisdiction Act, 1979, Rules 45 and 49 of the Tanzania Court of Appeal Rules, 2009, Section 47(1) of the Land Disputes Courts Act, (Act No. 2 of 2002) Cap 216 R.E 2002 and any other enabling provision of the law.

The respondents opposed the application by filing in the court a counter affidavit sworn by the second respondent, John Mkinga. In

addition to that, the counsel for the respondents filed in the court a notice of preliminary objection carrying the following points of law:

1. That the application is bad in law for wrong citation of the law.
2. That the application is bad in law for contravening the mandatory requirement of section 47(1) of the Land Disputes Courts Act [Cap. 216 R.E 2019].

When the matter came for hearing the above listed points of law the applicant appeared in the court in person and the respondents were represented by Mr. Zuberi Maulidi, learned counsel who was holding brief of Mr. Bernard Mapunda, learned counsel for the respondent with full instruction to proceed with hearing of the points of law. The counsel for the respondents told the court in relation to the first point of law that, GN No. 140 of 2020 revised several laws which one of them is the Land Disputes Courts Act and requires the laws listed therein to be cited as the R.E 2019.

The counsel for the respondents argued that, the applicant in the application at hand has cited in the chamber summons that the application is made under section 47(1) of the Land Disputes Courts Act, Cap 216 R.E 2002 instead of R.E 2019 as required by the GN No. 140 of 2020. He argued further that, the applicant has also cited in the

chamber summons that the application is made under Rules 45 and 49 of the Court of Appeal Rules, 2009 without specifying the application is made under which specific sub-rules of the cited Rules. He stated it is because of the above stated reasons they have submitted the application is bad in law for wrong citation of the law.

He argued in relation to the second point of preliminary objection that, the application shows is originating from the District Land and Housing Tribunal of Songea while the applicant is seeking to appeal against the decision made by the High Court of Songea. He prayed the court to use the above stated reasons to struck out the application and direct the applicant to file in the court the application which will be made under the correct provisions of the law.

In his reply the applicant told the court in relation to the first point of preliminary objection that the application is made under correct provision of the law. He told the court there is an application which was made under the provision of the law he has made his application and it was granted by this court. He said he has cited the said case in his reply he filed in the court to oppose the points of law raised by the counsel for the respondents. As for the second point of preliminary objection he said



as he is not a lawyer and he don't know the law is leaving it to the court to look at it and decide about its correctness.

In his rejoinder the counsel for the respondents reiterated what he argued in his submission in chief that the application is made under wrong laws. As for the case the applicant said he has cited in his reply to their preliminary objection he said that case was dealing with section 5(1) (c) of the Appellate Jurisdiction Act which they have not challenged in the application at hand.

The court has carefully considered the submissions made to this court by both sides and after going through the chamber summons and its supporting affidavit it has found that, as rightly argued by the counsel for the respondents in relation to the first point of preliminary objection among the laws upon which the application at hand is made is the Land Disputes Courts Act which is cited as Act 2002 (Act No. 2 of 2002) Cap. 216 R.E 2002. The Land Disputes Courts Act is among the laws revised by GN No. 140 of 2020 published on 28<sup>th</sup> February, 2020. The mentioned subsidiary legislation requires the laws listed in the schedule contained therein to be cited as revised edition of 2019 (i.e R.E 2019).

That being the position of the law the court has found the issue to determine at this juncture is whether citation of the Land Disputes Courts Act as cited in the application at hand is wrong. The court has found section 20 (1) (a), (b) and (c) of the Interpretation of Laws Act provides clearly how a law can be cited or referred. It states as follows:-

*"20. - (1) where a written law is referred to, it shall be sufficient for all purposes to cite or refer to that written law by-*

- a) the short title or the citation (if any) by which it was made citable;*
- b) in the case of an Act, the year in which it was passed and its number among the Acts of that year; or*
- c) in the case of an Act, the Chapter number given to the Act in any revised edition of the laws."*

From the wording of the above quoted provision of the law it is crystal clear that, a written law can be cited or referred by its short title or the number and year in which it was enacted and or the Chapter number given to the Act in any revised edition. Now back to the application at hand the court has found the applicant has cited the application at hand is made under section 47 (1) of the Land Disputes Courts Act 2002 (Act No. 2 of 2002) Cap 216 R.E 2002 instead of being cited as R.E 2019 as required by the GN. No. 140 of 2020.



The court has found that, although it is stated in paragraph (c) of the above quoted provision of the law that the Act can be cited or referred by the Chapter number given to the Act in any revised edition of the law but that does not mean a law can be cited or referred by using its old revised edition where there is a new revised edition. To the view of this court the use of the word "any revised edition of the laws" in section 20 (1) (c) of the Interpretation of Laws Act it means that, where the law is referred by its Chapter number is required to be referred by Chapter number given to the law in its current revised edition and not in the old revised edition of the law. The above stated view of this court is getting support from section 12 (2) of the Laws Revision Act, which states as follows:-

*"12. -(2) from the date specified in the proclamation, the part or section of the revised edition or annual supplement described in such proclamation shall, subject to the provision of section 13, be deemed to be and shall be noted in all courts of law, as the proper law of Tanzania in respect of the laws included therein."*

The above quoted provision of the law shows clearly that, where a law has been revised and specified in a proclamation which passed a revised edition of the law, that law is required to be cited by making

reference to its revised edition and all courts of law are required to deem and note it as the proper law of Tanzania. Since the Land Disputes Courts Act upon which the application at hand is made is included in the proclamation made in GN No. 140 of 2020 which published the current revised edition of the laws of 2019 it is the finding of this court that, as rightly argued by the counsel for the respondent it was wrong for the applicant to cite that law by making reference to the old revised edition of 2002 instead of the current revised edition of 2019.

The court has also gone through section 47 (1) of the Land Disputes Courts Act upon which the application at hand is made and find that provision of the law is providing for right of appeal to a person aggrieved by the decision of the High Court when exercising its original jurisdiction and not when exercising its appellate jurisdiction as it was for the decision the applicant is seeking for leave to appeal against it. The court has come to the above finding after seeing that, the applicant is seeking for leave to appeal to the Court of Appeal against the decision made by this court in the Land Appeal No. 13 of 2019. The mentioned land appeal originated from the decision made by the District Land and Housing Tribunal of Songea in Land Application No. 44 of 2017.



That being the position the court has found as the applicant is seeking for leave to appeal to the Court of Appeal against the decision made by this court in the exercise of its appellate jurisdiction then his right of appeal to the Court of Appeal is provided under section 47 (2) of the Land Disputes Courts Act and not section 47 (1) of the cited law. To be more precise section 47 (1) and (2) states as follows:-

- (1) A person who is aggrieved by the decision of the High Court in the exercise of its original jurisdiction may appeal to the Court of Appeal in accordance with the provisions of the Appellate Jurisdiction Act.*
- (2) "A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may, with leave of the High Court or Court of Appeal, appeal to the Court of Appeal."*

The above quoted provisions of the law make the court to come to the finding that, making the application for leave to appeal to the Court of Appeal against the decision made by the High Court in the exercise of its appellate jurisdiction under section 47 (1) of the Land Disputes Courts Act is wrong citation of the section of the law. The applicant was required to make the application under section 47 (2) of the cited law and not section 47 (1).



The effect of making an application under wrong section of the law as stated in number of cases decided by this court and the Court of Appeal is to render the application incompetent. (See the cases of **Marcky Mhango V. Tanzania Shoe Company**, Civil Application No. 37 of 2003, **Almas Iddie Mwinyi V. National Bank of Commerce and Another**, Civil Application No. 88 of 1998 and **City bank of Tanzania Limited V. Tanzania Telecommunications Company** (all unreported)).

The court has also gone through Rules 45 and 49 of the Tanzania Court of Appeal Rules, 2009 cited in the application of the applicant and find that, as rightly argued by the counsel for the respondents the cited Rules have paragraphs and sub-rules and the applicant has not indicated the application is made under which paragraph or sub-rule of the cited Rules. To the view of this court and as it has been held in number of cases decided by this court and the Court of Appeal of Tanzania that amount to a non- citation of paragraph or sub-rule of the law applicable in the application. The above view of this court can get support from the case of **Edward Bachwa & Another V. The Attorney General and Another**, Civil Application No. 128 of 2006 CAT at DSM (unreported) where the Court of Appeal of Tanzania held that:-

*"Wrong citation of the law, section or paragraph of the law or non-citation of the law will not move the court to do what is asked and renders the application incompetent."*

The court has considered the argument made to the court by the applicant that the court entertained the application seeking for leave to appeal to the Court of Appeal of Tanzania in the case of **Nathaniel Lungu V. Isidory Moyo**, Misc. Land Application No. 39 of 2019, HC at Songea (unreported) which was made under the provisions of the law similar to the one he has cited in his application and granted the application but found the cited case is distinguishable from the case at hand. First of all the court has found that case was an application to appeal against the decision made by the court in its original jurisdiction and not in its appellate jurisdiction as it is for the applicant's application.

Secondly, there was no issue of wrong citation of the revised edition of the law and wrong citation of the law which was raised in the said case and decided by the court as it has been raised in the application at hand. The court has also found that, although the Land Disputes Courts Act was cited in the above cited case as R.E 2002 but that was not wrong to cite that law as such because when the said case was filed in the court the GN. No. 140 of 2020 which requires the said law to be cited as R.E 2019 had not been promulgated. That makes the




court to find the case of **Nathaniel Lungu** is not similar to the applicant's application.

Having find the application of the applicant is bad in law for being made not only under wrong revised edition of the law but also under the wrong provision of the law and there is non-citation of paragraphs and sub-rules of the Rules cited in the application the court has found there is no need of wasting time to deal with the second point of preliminary objection as the first point of preliminary objection is sufficient enough to dispose of the matter.

In the upshot the first point of preliminary objection raised by the counsel for the respondents that the application is bad in law for wrong citation of the law is hereby upheld and the application is accordingly struck out for being incompetent and the costs to follow the event. It is so ordered.

Dated at Songea this 22<sup>nd</sup> day of April, 2021

  
**I. ARUFANI**  
**JUDGE**  
**22/04/2021**



**COURT:**

Ruling delivered today 22<sup>nd</sup> day of April, 2021 in the presence of the applicant in person and in the presence of the respondents who are also represented by Mr. Zuberi Maulidi, learned advocate. Right of appeal to the Court of Appeal is fully explained to the parties.

  
**I. ARUFANI**  
**JUDGE**  
**22/04/2021**

