

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

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

MISC. LAND APPLICATION NO. 89 OF 2020

(From the Ruling of the High Court of Tanzania at Mbeya in Misc. Land Application No. 47 of 2019. Originating from the District Land and Housing Tribunal of Rungwe at Tukuyu in Application No. 34 of 2016.)

CHARLES MARTIN MWAKATIKA.....APPLICANT

VERSUS

DANIFORD ATHUMAN MWAKATIKA.....1ST RESPONDENT

DAVID ATHUMAN MWAKATIKA.....2ND RESPONDENT

RULING

Date of Hearing: 03/03/2021

Date of Ruling : 25/03/2021

MONGELLA, J.

The applicant is seeking for leave to appeal to the Court of Appeal against a decision of this court (Mambi, J.) rendered in Misc. Land Application No. 47 of 2019. In that application the respondents applied to be granted extension of time to appeal against the decision of the District Land and Housing Tribunal for Rungwe rendered in Application No. 34 of 2016 after delaying for more than two years. The High Court granted the respondents the extension of time sought. This annoyed the applicant and

he wishes to appeal to the Court of Appeal, hence this application for leave.

During the hearing, Mr. Daniel Muya represented the applicant in holding brief for Mr. Edwin Bantulaki, both learned advocates. He submitted before this court that the application is brought under section 47 (2) of the Land Disputes Courts Act, Cap 216 R.E. 2019 together with Rule 45 (a) of the Court of Appeal Rules, 2009 as amended. Arguing on the reasons for seeking leave, he presented three main triable issues calling for determination by the Court of Appeal. These are:

First, whether it was correct for the judge to decide on Application No 47 of 2019 by adding or basing on new facts that never transpired in the application. Second, that the decision on Application No. 47 of 2019 did not consider the arguments brought up by the current applicant. Third, that this Application has not been objected by the respondents, thus there is no any legal base hindering this court to grant the application. On these grounds he prayed for the court to grant the leave sought.

On their part, the respondents did not object the applicant's application. In a brief submission made by their learned advocate, Mr. Omary Ndamungu, they urged the court to consider the applicant's application and decide accordingly, but with no award of costs.

I have considered the submission of Mr. Muya. However, I find that the applicant embarked on a superfluous journey in filing and arguing this application. I say so in consideration of the fact that the application is brought under section 47 (2) of Cap 216. This provision provides:

*"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"* [Emphasis added].

It should be noted that the applicant is seeking to appeal against a decision of this court rendered in an application for extension of time to appeal. The question to be pondered is thus whether this court in determining an application for extension of time to appeal exercises its revisional or appellate jurisdiction in terms of section 47 (2) cited above. This question has been dealt with in a number of decisions by this court and the ruling has been that the court exercises its original jurisdiction when entertaining an application for extension of time to appeal. In **Bashir Ally v. Anyegile Andendekisye Mwamaluka & 2 Others**, Misc. Land Application No. 92 of 2019 (HC at Mbeya, unreported) this court held:

"...the term appellate jurisdiction as used under section 47(2) of Cap 216 does not include the powers of this court in entertaining applications for extension of time for appealing to this court from decisions of a DLHT."

In **Uchaguzi Grayson Mwakabana & 3 Others v. The Registered Trustees of the Redeemed Assemblies of God in Tanzania (RAGT)**, Misc. Land Application No. 77 of 2020 (HC at Mbeya, unreported) this court also held:

"...in an application for extension of time to file appeal or revision, the court sits in its original jurisdiction. The court can only be taken to be in exercise of its revisional or appellate jurisdiction when it deals with an appeal or revision filed in

court. An application for extension of time is not in itself an appeal or revision."

See also: **Anna John Mwambinga v. Bahati John Mwambinga**, Probate Appeal No. 08 of 2020 (HC at Mbeya, unreported). In the premises, I find the applicant's application misconceived. He was supposed to file an appeal in the Court of Appeal without seeking for leave in terms of section 47 (1) of Cap 216 as amended. He is further advised to do so subject to limitation of time. The application is therefore struck out with no orders to costs.

Dated at Mbeya on this 25th day of March 2021.


L. M. MONGELLA

JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 25th day of March 2021 in the presence of the respondents.




L. M. MONGELLA

JUDGE