

**IN THE HIGH COURT OF TANZANIA
(DODOMA REGISTRY)
AT DODOMA**

MISC CIVIL APPLICATION NO. 23 OF 2020

(ARISING FROM CIVIL REVISION NO. 3 OF 2019, HIGH COURT, DODOMA,
DATED 7TH AUGUST 2020)

BETWEEN

NEEMA GABRIEL MAJALIWA.....APPLICANT

VERSUS

SARAWEKI ISRAEL SALEMA..... 1ST RESPONDENT

MANG'ANA RASHID MANG'ANA.....2ND RESPONDENT

NURDIN RASHID MANG'ANA..... 3RD RESPONDENT

SHABANI RASHID MANG'ANA.....4TH RESPONDENT

RULING

DATE OF RULING – 08TH APRIL 2021

MANSOOR, J.

This is an application made under Rule 45 (a) of the Court of Appeal Rules, 2009 as amended by the Tanzania Court of Appeal (Amendment) Rules, 2017 and 2019. The Applicant prays for Leave to appeal to the Court of Appeal against the decision of this Court in

Civil Revision No. 3 of 2019 delivered on 7th August 2020. This application was filed in Court on 17th September 2020. The application was supported by the affidavit of Neema Gabriel Majaliwa, the applicant herein. In paragraph 5 of the affidavit the Applicant states that there are points of law which needs to be determined by the Court of Appeal, and the question to be determined is whether Saraweki Israel Salema, the 1st respondent herein is the wife of the Late Rashid Mang'ana Marwa, the deceased. Whether Saraweki Israel Salema is entitled to a share in the estate of the Late Rashid Mang'ana Marwa, and whether there was proper Petition for Letters of Administration filed at the District Court by the Applicant herein.

The respondents took an objection that the application is time barred as it was filed outside the prescribed time. Section 45(a) of the Court of Appeal Rules, 2009 provides for 30 days for one to apply for leave to appeal to the Court of Appeal from the date of the decision. Based on the decisions of the case of **Asumin Mohamed Mkiwa versus Mzee Issa Athuman and another, Misc. Civil**

Application No. 9 of 2020, High Court of Tanzania Mtwara, and the case of **Elias Kamokyo versus Jasson Kasaizi and 2 others**, High Court of Tanzania, Bukoba, in which the applications for leave to appeal filed beyond 30 days of the date of the decision were dismissed.

The Applicant filed a Reply submission in which she admitted having filed the application beyond the prescribed time, they prayed to withdraw the application.

The remedy for a matter filed in court beyond the time prescribed is as stated in section 3 (1) (c) of the Law of Limitation Act, Cap 89 R: E 2019, and is to dismiss it. There is no any other remedy. A party who has filed a matter beyond the time allowed by the law cannot be allowed to withdraw more so when the other party has taken an objection on its maintainability. Allowing a party to withdraw the application without a proper application to withdraw or abandon it is unprocedural. A party cannot make a prayer to withdraw the application in a written submission. Written

submissions are strictly a hearing of the matter already in court but by way of writing. The applicant ought to have made an application under Order XXIII of the Civil Procedure Code, Cap 33 R: E 2002 to abandon or withdraw the application, that kind of application ought to have been made before the preliminary objection raised by the respondents was heard and determined. Since the remedy of an application filed beyond the prescribed time is to dismiss it, this application is hereby dismissed with costs for reasons of limitations.

Application is hereby dismissed with costs.

DATED at DODOMA this 08th Day of APRIL 2021




L. MANSOOR,

JUDGE

08TH APRIL, 2021