

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC LAND APPLICATION NO. 99 OF 2020

*(Originating from Hc. Land Appeal No. 103/2016 DLHT – Land Application
No. 172/2013)*

LUDOVICK MICHAEL MASAWE APPLICANT

VERSUS

SAMSON HERMAN RESPONDENT

RULING

24/02/2021 & 27/04/2021

W. R. MASHAURI, J;

By didn't of the chamber summons filed in this court by the applicant Ludovick Michael Masawe, this is an application for extension of time for the applicant to file notice of appeal and application for leave to appeal to the Court of Appeal of Tanzania out of time.

The application is made under sections 5(I) (c) and II (I) of the Appellate Jurisdiction Act Cap 141 and section 47(I) of the Land Disputes Court Act Cap. 216 R.E. 2002.

All parties appeared in person. When the matter was called for hearing on 24/02/2021, the applicant told the court that, he bought the disputed plot in 1978 from Mr. Kasonso District Magistrate and he was given a certificate of officer. That, the said plot is boarded with plot No. 1373 the property of Mr. Bashiru Mushi and he was given an offer with Reference No. 1537=97/Z/AZR-MZM/15397/ZAZR Zungu Katundu Mtondo HLP Mwanza on 9/10/1998. The sale transaction was documented.

That, what caused his delay to lodge his appeal within 30 days is the High court's failure to supply him with a copy of judgment in time. That, his intended appeal has an overwhelming chances of success. The applicant further contended that, he bought the Plot in 1998 from Mr. Kasonso District Magistrate and he was given the certificate of offer.

That the plot is boarded with the Plot of Mr. Bashiru Mushi Plot No. 1373/Z/AZA-MZM/15397/ZAZR Zungu Katundu Mtondo HLP 717 MWANZA ISSUED ON 09/10/1998 AND THE TRANSACTION WAS DOCUMENTED BY THE OFFICE OF THE Prime Minister with Reference No. 13839/4 TKT of Mr. Bashiru Mushi which was documented before Mr. Kasonso District Magistrate. He produced in court the said letters.

On his part, the respondent Samson said in reply that, he got the plot in disputed on 18/03/1996 from Mr. Katundu Mtondo who sold Plot No. 73/3/A/II located at Nyakato area which he bought before the street government officials and he built a house there upon completed the process as required by the land law on 3/10/2010.

That, he was however sued by Mr. Katundu for trespassing into his plot. The matter was taken into the Ward Tribunal and he wone the case. Mr. Katundu appealed to the District Land and Housing Tribunal where he also cost his case. he appealed to the High Court before Hon. Matupa where again he cost his case.

That, he has been in possession of the plot from 2018 to 2021 and has been all the time paying the government levy for the plot and he has receipts. The reference of the offer he was given is Samson Herman N. 275/B/OA Nyasaka DCC/L45774 Mwanza City. IWE Mwanza vide Transfer No. 273.

The issue is whether this application is properly filed in this court.

By virtue of the applicant's chamber summons, this is an application for extension of time for the applicant to file Notice of Appeal to the Court of Appeal of Tanzania out of time.

The application is made under section 5(I) (c) and II (I) of the Appellate Jurisdiction Act Cap. 141 and section 47 (I) of the Land Disputes Courts Act Cap. 216 Section 5(I)(c) of the Act provides that: -

- (1) In civil proceedings except where any other law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal.
- (2) No appeal shall lie against the decision or order of the High court in any proceedings under Head "C" of part III of the MCA Cap. II R.E. 2009 unless the High court Cert6ifies that a point of law is involved in the decision or order section III (I) of the Cap. 141 also provides that: -

Subject to subsection (2), the High court of where an appeal lies from a subordinate court excessing extended jurisdiction powers the subordinate court concerned may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned.

And section II-(I) of the Act provides that: -

II – (I) subject to subsection (2), the High court or where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgment of the High court or of a subordinate court concerned for making an application for leave to appeal or for a certificate that the case is a fit case for appeal notwithstanding that the time of giving the notice or making the application has already expired.

In his submission and/or an affidavit in support of the application, the applicant has failed to specify any point of law involved in the fit for certification and referring the same to the court of appeal for determination.

At law a certification as to a point of law if involved in decision or order is done by the high court whenever a matter had originated from a primary court as provided for under Head "C" Part III of the MCA Cap. II R.E. 2009.

On that regard, and bearing in law on which this appeal lies, as well as what contended by the applicant as well as in his affidavit this application lacks point of law for cortication by this court to be a fit case for reference

to the court of Appeal for determination. The application is dismissed for want of point of law. No order as to costs is made.




W. R. MASHAURI

JUDGE

27/04/2021

Date: 27/04/2021

Coram: Hon. W. R. Mashauri, J

Applicant:

Respondent:

B/c: Elizabeth Kayamba

Court: Ruling delivered in court in presence of all parties for line this
27/042021.




W. R. MASHAURI

JUDGE

27/04/2021