

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

MISC. LAND APPLICATION NO. 82 OF 2020

(C/F Land Application No 23 of 2017, Misc. Application No. 52/2016, Misc. Application No 38/2014, Original Same DLHT Application No. 1/2014)

LENARD MAKENYA ----- APPLICANT

VERSUS

JUMBE ABEID ----- 1ST RESPONDENT

MUSA MKOTE ----- 2ND RESPONDENT

IRENE MKENGA ----- 3RD RESPONDENT

RULING

MUTUNGI .J.

The Application is made in terms of **Section 11(1) of the Appellate Jurisdiction Act, Cap 141 RE 2019** which seeks for extension of time to file what the Applicant terms as a "second bite" Application to the Court of Appeal. The same is supported by an affidavit deponed by the applicant. The 3rd respondent contested the application by raising 4 limbs on a preliminary objection thereof namely: -

1. The application is an abuse of the court process
2. That, this application is res judicata to Miscellaneous Application No. 23 of 2017.
3. That, this court has no jurisdiction to determine this application
4. The application is incompetent for being filed under a wrong provision of the law.

The parties herein prayed to proceed by way of written submissions. I shall thus summarize the submissions as submitted by the parties. It was the respondent's submission that the decision from which the Applicant applies for extension of time to apply for leave on a 2nd bite was pronounced before **Section 47(1) of the Land Dispute Court Act was amended by the Written Laws (Miscellaneous Amendments Act No. 3 of 2018)**. Before the amendment, the High Court had exclusive jurisdiction to grant leave to appeal to Court of Appeal in land matters. The Respondent further argues that, the remedy in case of denial of leave could be to appeal to the Court of Appeal against the decision and not to apply for another leave on a second bite.

The Respondent further submitted, through paragraph 8 and 9 of his affidavit, the same application for leave has

been unsuccessful filed to the Court of Appeal and for that the same cannot be refiled before this court.

Be as it may, this court has no jurisdiction to entertain the application because the application for leave on a second bite can only be entertained by the Court of Appeal as per **Rule 45(b) of the Tanzania Court of Appeal Rules 2009**.

Lastly, the Respondent argued, the applicant has been caught in the web of the doctrine of res-judicata. He is thus barred from filing an application similar to Miscellaneous Application No. 23 of 2017, which was dismissed for want of merit as stated in the Applicant's affidavit.

In the upshot, the Respondent concluded, this application is wrongly filed in this court, for that it should be dismissed with costs.

In reply, the Applicant was in all fours that the ruling which denied him leave to appeal was delivered before the amendment of **Section 47(1) of Land Dispute Court Act (supra)**. The amendment was not published in the public gazette and neither was it written in Swahili, he would have other words withdrawn his application filed in the Court of Appeal. In his settled view this would have paved way for

him to file a fresh application for leave to appeal out of time. In that arena, it was the applicant's argument that he is not to be blamed.

In concluding the Applicant prayed his application be struck out with no order to costs.

In response thereto, the Respondent was of the opinion that, impliedly the applicant has conceded to the Preliminary objection. Even though the Respondent complained it has been the tendency of the Applicant to file vexations and frivolous applications and later pray for the same to be struck out without costs. The same will happen to this application once it is struck out. The applicant has been engaging the respondent in endless litigations culminating to wastage of money and precious time. In order to put a stop to the frequent frivolous applications, the Respondent prayed the application be dismissed with costs or in the alternative be struck out with exemplary costs.

Having considered the parties' submission, the **issue is whether the Preliminary objection has merits?**

I will not labour much discussing the merit of the preliminary objection since through his reply the Applicant has


impliedly conceded that the decision which denied him leave to appeal to Court of Appeal was delivered before the amendment of **Section 47(1) Land Dispute Court Act (supra)**. In that regard he prayed the application to be struck out with no order as to the costs. For that reason, I find the Preliminary Objection has merits and I hereby struck out the application.

As to the order of costs, I wish to make it clear that each case must be determined basing on the set of facts and circumstances of the case. It seems the applicant is trying to strive for what he believes to be his right which was curtailed by the amendment to the **Land Dispute Court Act (Supra)**. I am persuaded by the words in the case of **CROPPER V SMITH (1884) 26 CH D 700 (CA) p. 710** which held inter alia that: -


"It is a well-established principle that the object of the court is to decide the rights of the parties and not to punish them for mistakes they made in the conduct of their rights. A Court, does not exist for the sake of disciplines but for the sake of deciding matters in controversy."

Basing on the above reason and cited authority, each party to bear own costs.

It is so ordered.


B. R. MUTUNGI
JUDGE
27/5/2021

Ruling read this day of 27/5/2021 in presence of 3rd Respondent and Mr. Coaster Alia (the Applicant's son).


B. R. MUTUNGI
JUDGE
27/5/2021



RIGHT OF APPEAL EXPLAINED.


B. R. MUTUNGI
JUDGE
27/5/2021