

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

MISC. LAND APPLICATION NO 19 OF 2020

(Emanating from Land Appeal No.03 of 2018 of the High Court of Tanzania at Shinyanga, Originating from Land Application No. 123 of 2008 Shinyanga District Land and Housing Tribunal at Shinyanga)

ABDI RAHMANI MOHAMUD DARMA.....APPLICANT

VERSUS

HERSI WARSAMA MOHAMED.....RESPONDENT

RULING

1/07/2021 & 23/07/2021

MKWIZU, J.:

On 06th May 2021 the applicant **ABDI RAHMANI MOHAMUD DARMA** filed an application for leave to appeal to the Court of Appeal of Tanzania against the decision in Land Appeal No. 03 of 2018.

Briefly facts from the records are that, the respondent was the Applicant in Land Application No. 123 of 2008 at Shinyanga District Land and Housing Tribunal where he sued the applicant for a claim that he is the lawful owner of Plot Nos. 442,444,445,447,448,449 Block "E" Isaka within Kahama

Municipal with CT No. 20 182 formerly No. 56 Block "F". The Tribunal found for the respondent. Dissatisfied, applicant filed Land Appeal No. 03 of 2018 in this court, which was on 17/8/2018 dismissed for being time barred. Tirelessly, and after having obtained an extension of time to file this application, applicant has come with a request for leave to appeal. It is made by Chamber Summons made under Section 47 (2) of the Land Disputes Courts Act, Cap. 216, supported by an affidavit.

When the matter came for hearing on 1st July, 2021 Mr. Innocent Kisigilo, Advocate represented the applicant while y Mr. Kassimu Gilla also learned Advocate was for the respondent.

Having adopted the applicant's affidavit in support of the application, Mr. Kisigiro contended that, this court in Land appeal No 9 of 2018 failed to take into account a letter by the applicant requesting for copies of the decision for appeal purposes. Making reference to paragraph 12 of the affidavit in support of the application, Mr. Kisigiro argued that, applicants have vital points for court of appeal's determination. He cited the decisions in **Hamisi Mdida & Saidi Mbogo Vs. The Registered Trustee of Islamic Foundation**, Civil Appeal No. 232 of 2018 (Unreported) and **Registered**

**Trustees of Marian Faith Healing Center & Wanamaombi vs
Registered of Trustee Catholic Church Sumbawanga Dioceses,** Civil
Appeal No. 64 of 2006 (CAT DSM) TANZLII to bolster his arguments.

The application was seriously attacked by the respondent's counsel through his counter affidavit as well as oral submission made before the court during hearing. Mr. Gilla argued that, the averments contained in par 4,5,8 and 12 of the applicant's affidavit were not subject of the discussion during the hearing of appeal No 03 of 2018. He was of the contention that, though applicant's counsel concedes that copies of the judgment and decree were certified by the trial tribunal on 28th December, 2017, he never submitted as to when he applied for the said copies. Mr. Gilla was of the view that, applicant's affidavit contains new matters which did not form part of discussion by the court in Land Appeal No. 3 of 2018.

Submitting on the general principle of the law guiding leave, respondent's counsel stated that, leave to appeal to court of appeal is not an automatic right, is only granted where the decision sought to be appealed against raises a legal point or novel issue of law which is/are worth considering by the court of Appeal and for issues of law to be considered in respect of decision,

parties must have been fully heard on the alleged issues. He cited to the court the case of **National Bank of Commerce vs Maisha Mussa Uledi (life business center)**, Civil Application No. 410/07/2019. He at the end prayed for the dismissal of the application with costs.

Rejoining, Mr. Kisigilo submitted that the High court decision is centered on the issue that the letter requesting for the copy of the decision is not in the court's records and therefore it is not a new matter.

I have gone through the records of this application and the rival submissions of the parties and the intended grounds of appeal as established by the applicant herein. As correctly submitted by Mr. Kassim Gilla for the respondent, for the court to allow an application for leave to appeal to the court of appeal, the decision sought to be appealed against must raise legal issues worth consideration by the court of Appeal. Paragraph 12 of the applicant's affidavit raises three issues

- i. Whether the high court in appeal was justified in law to dismiss the appeal in accordance with the law of limitation.*
- ii. Whether the High court in appeal was justified for not excluding time when the applicant was waiting to be supplied with certified*

copies of judgement and Decree of the trial tribunal for appeal purposes.

- iii. *Whether the high court Judge on appeal was right to dismiss the appeal while the certified copies of Judgement and Decree were ready for collection on 28/12//2017 and no any other information that the documents were ready for collection before that date.*

It is on the records that the Judgment in Land Application No. 123 of 2008 was delivered on 07th December, 2017. Page 18 indicate that it was certified on 28th December, 2018 and the dismissed appeal was filed on 25th January, 2018. The complaint is that appellate judge failed to consider the fact that applicant had within time applied for the copies of the certified copies.

Having analyzed the partis submissions, the dismissal order in Land appeal No 3 of 2018 vis -a- vis the intended grounds of appeal. I find that, applicants application is tenable. However, the three grounds revolve on only one ground ***whether the High court was justified to dismiss the appeal for being time barred under the law of limitation Act.*** The other two grounds would be expounding on the first ground above.

I on the above reason, allow the application. Leave to appeal to the Court of Appeal against the decision in Land Appeal No 3 of 2018 is granted. With no order as to costs.

It is so ordered.

DATED at SHINYANGA this 23th day of JULY, 2021.



E.Y MKWIZU
JUDGE
23/07/2021

