

**IN THE HIGH COURT OF TANZANIA
TABORA DISTRICT REGISTRY
AT TABORA.**

MISC. LAND APPLICATION NO. 32 OF 2019

(Originating from the Land Appeal No. 25 OF 2014 of the High Court of Tanzania at Tabora and Application No. 56 of 2012 of the District Land and Housing Tribunal for Kigoma)

REV. SADOCK YAKOBO MLONGECHA.....APPLICANT

VERSUS

**THE REGISTERED TRUSTEES OF
PEFA KIGOMA.....RESPONDENT**

RULING

Date of Last Order: 2/7/2021

Date of Delivery: 19/07/2021

AMOUR S. KHAMIS, J.

Until the year 2006, Reverend Sadock Yakobo Mlongecha had served for 38 continuous years as undisputed leader of the Kigoma based Church, the Registered Trustees of PEFA Kigoma.

In 2012, he sued his own church - PEFA Kigoma in the District Land and Housing Tribunal for Kigoma on ownership of a house on Plot No. 168, Lumumba Road, Kigoma in which he had stayed continuously from the time of its purchase, the year 1972.

The trial chairman found Reverend Sadock Yakobo Mlongecha failed to prove his claim and dismissed the suit with costs.

On appeal to this Court by Reverend Sadock Yakobo Mlongecha, the Registered Trustees of PEFA Kigoma were declared lawful owners of the disputed property and the appeal was dismissed.

Disgruntled by the outcome of the appeal, Reverend Sadock Yakobo Mlongecha lodged an application for leave to appeal to the Court of Appeal of Tanzania on the grounds that the Judgments and Decrees of the High Court and the District Land and Housing Tribunal were tainted with illegalities.

The application was made by way of Chamber Summons under Section 47(2) of the Land Disputes Courts Act, Cap 216, R.E 2002 as amended by Section 9 of the Written Laws (Miscellaneous Amendments (No. 3) Act, 2018 and Section 5 (1) (C) of the Appellate Jurisdiction Act, Cap 141, R.E 2002.

An affidavit sworn by Method Raymond Gabriel Kabuguzi, learned advocate, supported the application.

Mr. Kabuguzi averred that having lost Land Appeal No. 25 of 2014, Reverend Sadock Mlongecha instructed him to take necessary steps for purposes of appeal to the Court of Appeal.



He said that vide Civil Appeal No. 277 of 2017 Rev. Sadock Mlongecha challenged the impugned High Court decision in the Court of Appeal.

The learned advocate further averred that:

“5. That when the said Civil Appeal No. 277/2017 came for hearing before the Court of Appeal on 27th August 2018, the Honourable Court This is the Ruling in respect of the Preliminary objection raised by the respondent through service of Leonard & Co. Advocates and the Application for leave to appeal to the Court of Appeal which was filed by the applicant through service of Kigoma Advocates Law Chambers.

The learned advocate deposed that copies of the ruling and orders of the Court of Appeal were supplied to him on 6/09/2018 and thereafter, this Court granted extension of time for lodging a notice of appeal through Misc. Land Application No. 59/2018. A fresh notice of appeal was duly lodged on 8/04/2019.

Mr. Kabuguzi averred that upon perusal of the trial tribunal’s proceedings, he noticed that assessors had cross examined witnesses contrary to law and procedures.

Upon being served with the chamber application, the Registered Trustees of PEFA Kigoma filed a counter affidavit and a notice of preliminary objection alleging that *the application is incompetent for being filed out of time.*



Pursuant to the Order of the Court, the preliminary objection and the application itself were simultaneously argued by way of written submissions.

In support of the preliminary objection, Susan N. Gisabu, learned advocate for the Registered Trustees of PEFA Kigoma, practicing under the name and style of Leonard & Co. Advocates of Nyamagana District, Mwanza, contended that the application was time barred because it was signed by the Deputy Registrar on 10th July 2019 whereas it was lodged on 2nd July 2019.

According to her, the two dates ought to be replica. She further argued that the application was lodged after expiry of 14 days from date of the impugned decision.

In reply, Mr. Method R.G Kabuguzi for the applicant, contended that vide Misc. Land Application No. 11 of 2019, this Court granted extension of time for the applicant to file this application.

He asserted that the relevant ruling was delivered on 19/06/2019 and the application was lodged on 2nd July 2019 meaning that it was lodged within 14 days.

I have inspected relevant documents touching on this objection. In a ruling delivered by this Court on 18th June 2019 vide Misc. Land Application No. 11 of 2019, the applicant was granted 14 days within which to lodge application for leave to appeal to the Court of Appeal.

The application at hand was lodged on 2nd July 2019. Counting from 18/06/2019, this application was lodged on the 14th day from



date of the decision that extended time for presenting application for leave to appeal.

It follows that the application was timely lodged and the objection is dismissed for lack of merits.

Having dismissed the preliminary objection, I now turn on to determine the merits of the application for leave to appeal to the Court of Appeal.

It is on record that when parties were ordered to file submissions on both preliminary objection and the application, the Registered Trustees of PEFA Kigoma partially complied with the order by presenting submissions on the preliminary objection.

Since no submissions were filed by the learned counsel for the respondent in opposition to the application for leave to appeal, I am constrained to solely rely on the applicant's submissions.

At this juncture, I should restate the law that written submissions is tantamount to a hearing and therefore failure to file submission is comparable to non - appearance on the date of hearing which may attract dismissal of the suit for want of prosecution.

In support of the application, Mr. Method R.G Kabuguzi adopted contents of the affidavit in support of the application particularly paragraphs 5, 7 and 8 thereof.

He contended that the intended appeal is expected to raise crucial legal issues for determination by the Court of Appeal and pointed out that the impugned Judgment was delivered by the

learned Chairman who did not preside over the trial proceedings and did not give reasons for the succession.

In aid of the contention, Mr. Kabuguzi referred this Court to the Court of Appeal decision in **HAMISI MDIDA & ANOTHER V THE REGISTERED TRUSTEES OF ISLAMIC FOUNDATION, CIVIL APPEAL NO. 232 OF 2018** (unreported) which dealt with the aspect of assessors who cross examined witnesses.

Factors to be considered by the Court in granting or refusing an application for leave to appeal to the Court of Appeal were well stated by the Court of Appeal itself in the cases of **GAUDENSIA MZUNGU V THE IDM MZUMBE, CIVIL APPLICATION NO. 94 OF 1999** (unreported) and **M/S ISABILA INDUSTRIES LTD V TANZANIA INVESTMENT BANK & ANOTHER, CIVIL APPLICATION NO. 179 OF 2004** (unreported).

In **GAUDENSIA MZUNGU V THE IDM MZUMBE** (supra), the apex Court held that leave is not granted because there is an arguable appeal and observed that:

“...There is always an arguable appeal. What is crucially important is whether there are prima facie grounds meriting an appeal to this Court.”

In **WAMBELE MTUMWA CHAMTE V ASHA JUMA, CIVIL APPLICATION NO. 45 OF 1999** (unreported), the Court of Appeal held that:

“Unfortunately, it is not provided what factors are to be taken into account when considering whether or not to grant

leave to appeal to this Court. However, it is obvious that leave will only be granted if the intended appeal has some merits whether factual or legal.”

In the present case, the applicant asserted that the impugned Judgment of the trial Court was composed and delivered by the chairman who did not preside over the trial proceedings.

It was averred in Paragraph 7 (i) of the supporting affidavit that despite of the change of hands, the successor chairman did not assign reasons for taking over from the previous chairman.

This assertion was not specifically controverted by the respondent and it remained so.

Besides, the applicant's counsel averred that the learned appellate Judge did not take into account that dates shown on the trial tribunal's Judgment varied from the one written on its decree.

Whereas it is not the duty of this Court to go into the merits or otherwise of the intended grounds of appeal, such irregularities on the face of the record, in absence of contrary explanations, requires an intervention by the Court of Appeal.

In the circumstances, I am satisfied that the application presented sufficient grounds for consideration by the Court of Appeal.

To this end, I am fortified by the Court of Appeal decision in **HARBAN HAJI MOSI AND ANOTHER V OMAR HILAL SEIF AND ANOTHER (2001) TLR 409** at Pg 414 -415, wherein it was held that:

“Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceedings as a whole reveal such disturbing features as to require the guidance of the Court of Appeal. The purpose of the provision is therefore to spare the Court the specter of unmeriting matters and to enable it to give adequate attention to cases of true public importance.”

Consequently, and for the reasons stated, the application is granted. Let the applicant lodge the intended appeal in accordance to law and procedures. I make no order as to costs. It is so ordered.

Dated at Tabora this 19th day of July 2021



[Handwritten signature]
AMOUR S. KHAMIS

JUDGE

ORDER

Ruling delivered in open Court in presence of Mr. Amos Gahise, advocate holding brief of Mr. Method Kabuguzi, learned advocate for

the applicant. The respondent is absent. Right of Appeal is explained.



A handwritten signature in blue ink, appearing to read "Amour S. Khamis", is written over the seal.

AMOUR S. KHAMIS

JUDGE

19/7/2021