

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**MISCELLANEOUS LAND APPLICATION NO. 111 OF 2020**

*(Originating from the High Court Land Appeal No. 37 of 2013).*

**ABDALLAH OMARY** (Administrator of estates of

HASSAN BIGANIO.....**APPLICANT**

**VERSUS**

**SERIKALI YA KIJIKI CHA MWANZABULIGA.....RESPONDENT**

**RULING**

**Date of last Order: 19/08/2021**

**Date of Ruling: 26/08/2021**

**F. K. MANYANDA, J.**

This ruling is in respect of an application for extension of time within which to file an application for leave to appeal to the Court of Appeal and an application for leave.

The application is made under section 14(1) of the Law of Limitation Act, [Cap. 89 R. E 2019] and section 47(2) of the Land Dispute Courts Act, [Cap. 216 R. E. 2019]. It is made by way of chamber summons supported with an affidavit affirmed by the Applicant, Abdallah Omary (Administrator

of Estate of Late Hassan Biganio together with the counter affidavit gives the background of this matter as follows:-

Wayback in 2021 Late Hassan Biganio successfully sued the Respondent, a Village Council of Mwanza buliga, in the District Land and Housing Tribunal for Musoma (DLHT) which gave judgment in his favour on 22/03/2013; it awarded him general damages of Tsh 22,225,000/=

That decision of the DLHT aggrieved the Respondent who successfully appealed to this Court in Land Appeal No. 37 of 2013 which quashed the proceedings, and judgment of the DLHT on 23/02/2016, it also set aside the decree.

Seen this happening, the Late Hassan Biganio lodged an application No. 30 of 2016 for leave to appeal to the Court of Appeal of Tanzania within time. He also had lodged a notice of appeal well within time. However, it turned out that the application suffered some legal ailments. Hence, it was withdrawn with leave to refile on 09/05/2019.

With that leave in hand, Late Hassan Biganio filed a fresh application for leave to appeal to the Court of Appeal No. 177 of 2019, but again it was

discovered to have some legal irregularities, hence it was withdrawn with leave to refile. Late Hassan Biganio lodged an application No. 29 of 2020 but this one was struck out for want of competence. Unfortunately, Late Hassan Biganio also passed on to his next eternal life necessitating the Applicant Abdallah Omary, to enter into his shoes and file the instant application.

Hearing of this application was, with leave of this Court conducted by way of written submissions which was complied. The submissions for the Applicant were drawn and filed by Mr. Eric Katemi, learned Advocate, and those of the Respondent were drawn and filed by Bernard Kaunda Msalaba, learned Advocate.

Mr. Katemi submitting in support of the application, argued adopting the chamber summons and the affidavit in support of the application and stated that the reason for delay is what is termed in law as "technical delay". He relied on the authority in the case of **Haji Ali Bachoo vs Makunja C. B. and Co. Advocates**, Misc. Civil Application No. 69 of 2020 where this Court (Hon. Ismail, J) held that:-

*"The law is to the effect that delays which arise as result of pursuing matters which subsequently fall through on account of wrong procedure are excusable"*

Moreover, the Counsel argued that there are illegalities which are contained in the impugned the decision, namely, improper evaluation of evidence and improper admission of exhibits.

The purported illegalities also are the grounds for leave which according to him make up the points of law for consideration by the Court of Appeal of Tanzania.

On the other hand, the Counsel for the Respondent adopted the counter affidavit and added that it is not true that all the delays by the Applicant are due to pendency of applications before this Court. Then he listed five 5 unsuccessful applications which were either withdrawn or struck out, while the Applicant listed only three applications.

It was the views of the Counsel for the Respondent that what is important is an account for each day of delay as per the holding in **Elfazi Nyatega and others vs Caspian Ltd**, Civil Appl. No. 44/08 of 2017. The

Counsel contended that the repeated defects of applications filed in the name of deceased cannot be technical delay. He distinguished the case of **Haji Ali Bachoo (supra)** that it does not apply in the instant matter. He did not elaborate more.

As regard to illegalities the Counsel for the Respondent submitted that it is not enough to allege illegalities but the same must be demonstrable on the face of the record. He distinguished the case of **Yanga Mhogeja (supra)**

As to points of law, the Counsel argued that the Applicant has not demonstrated the grounds in his submission, hence he has not established grounds for both extending the time and the grounds for leave.

I have dispassionately considered the rival urging by both Counsel. As far as the application for extension of time within which to apply for leave; I find the Applicant has only shown one ground. The Applicant argued that he has been in the corridors of this Court pursuing his rights well within time only that he was prevented by legal technicalities which were not his contribution. The Applicant has shown that when the last application was

struck out he delayed when pursuing for letters of administration of the estate of Late Hassan Biganio.

In my considered views, the Applicant has demonstrated good cause for delay, what is in law referred to as technical delay.

The next issue is whether the Applicant has established sufficient grounds for this Court to grant leave to appeal to the superior most Court of our land.

The Applicant has raised two grounds, the first one is that this Court did not well evaluate the evidence on record. With due respect, apart from failure by the Counsel for the Applicant to show how and which evidence was left untouched by the Hon. Judge, I don't think whether this is a legal point of law worthy for consideration by the Court of Appeal. It is rather a ground of appeal based on facts not law, which was well canvassed by the Honourable Judge of this Court.

In application for leave to appeal only serious legal issues needing determination by the Court of Appeal are required to be raised.

In this matter at hand I don't think the allegations of failure to evaluate the evidence is one of such serious legal issues. I agree with the Counsel for the Respondent, this point lacks merit. The second grounds raised by the Counsel for the Applicant is that there is irregularity in admission of exhibit.

According to the Counsel for the Applicant it was improper for this Court to expunge exhibit PE4 which is a valuation Report.

According to the Counsel views, the DLHT is not bound to adhere to the Civil Procedure Code, procedures in conduct of cases including admission of exhibits. Rather the DLHT follows the Land Disputes Courts Act, and the Regulations thereof, unless there is a lacuna.

I agree with the Counsel for the Applicant this legal issue is of serious concern which need deliberation of the Court of Appeal.

In the case of **Jireys Nestory Mutalemwa vs Ngerongero Conservation Area Authority**, Civil Appl. No. 154 of 2016 (unreported) the Court of Appeal of Tanzania stated inter alia that:-

*"In leave it is a well-established principle of law that the Court is not expected to determine the merits or otherwise of the substantive issues before the appeal itself is heard."*

Further, conditions for grant of leave were lucidly expounded by the Court of Appeal in the case of **British Broadcasting Corporation vs Eric Sikujua Ng'maryo**, Civil Application NO. 138 of 2004. That case was cited in **Rutagatina C. L. vs The Advocates Committee and Another**, Civil Case No. 98 of 2010 (unreported) in which the Court of Appeal of Tanzania stated as follows: -

*"Purpose of leave, in other words the grounds should merit a serious judicial consideration by the Court. This is intended to spare the Court from dealing and wasting its precious time on un-merited matters."*

In this matter the issue is whether the DLHT is obliged to follow the CPC provisions in admission of exhibits. Where there are express provision in the Regulations and section 51(1) of the Land Disputes Courts Act is of serious concern worthy for consideration by the Court of Appeal.

It is on these reasons that I find the application is meritorious.



In the upshot, and for reasons stated above, I do hereby grant leave for the Applicant to appeal to the Court of Appeal of Tanzania only on the second point of law, that is admissibility of exhibit. Each party to bear its own costs. It is so ordered.



  
**F. K. MANYANDA**  
**JUDGE**  
**26/8/2021**