

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA

*Misc. Land Application No.95/2020. Original from Land Appeal No.79
of 2016 of the High Court of Tanzania and application No.171 of
2015 of the District Land and Housing Tribunal for Dodoma)*

ISSA MAHAMOUD MSONGAAPPLICANT

VERSUS

ZAKARIA STANSLAUS.....1st RESPONDENT

MAHAMOUD MSONGA.....2nd RESPONDENT

RULING

Date of Ruling: 13.08.2021

DR. MAMBI, J.

This ruling emanates from the application made by the applicant. The applicant (Issa Mohamoud Msonga) through the service of the learned Counsel Mr. Eliyas filed an application under section 11 of the Appellate Jurisdiction Acct, Cap 216 [R.E2019] and Section 47 (1) of the Land Disputes Courts Act, Cap 216 [R.E2019] seeking enlargement of time to file Notice of appeal and leave to appeal to the

Court of Appeal. The application made by an applicant is supported by an affidavit.

During hearing the applicant was represented by the learned Counsel Mr Eliyas while the respondent was represented by the learned Counsel Mr Godfrey Wasonga.

The applicant briefly submitted that he has filed his application for extension of time to file notice of appeal and leave to appeal to the court of appeal out of time. He briefly argued that the applicant has sufficient reasons based on technicalities. He briefly argued that as he was supplied late with the documents.

In response, the respondent Counsel Mr briefly submitted that the applicant is incompetent since the prayers sought were already garanted by this court under Hon. Kalombola. He argued that the leave was granted by this court in Miscellaneous Land ApplicationNo.89 of 2017 on 06/09/2018.He was of the view that the court cannot entertain the prayers that were already determined by the same court.

He argued that it has taken a long time since the matter was decided. He argued that the application has no merit and there was no any sufficient reasons indicated under the respondent's counter affidavit.

In his rejoinder, the applicant Counsel briefly submitted that it is true that the notice of appeal is already there but in terms of rule 91 of the court of Appeal Rules the application before this court is proper.

I have considerably gone through the application and submission by both parties. In my considered view the main issue is whether an application before this court is proper or not. In other words this court needs to determine if the applicant has properly moved this court or not. There is no dispute that the applicant has filed an application for extension of time to file notice of appeal and leave to the court of appeal. However, my perusal from the records reveal that the applicant had once submitted similar application via application No.89 of 2017. Indeed the applicant filed his application under the same provision of law that is Section 47 (1) of the Land Disputes Courts Act, Cap 216 [R.E2019]. The application was determined by this court on 06/09/2018 where the applicant was granted an extension of time and leave to appeal to the court of appeal. I wish to quote an order made by Hon.Judge Kalombola as she was as follows:

"In order to see that justice is reached without delay, this court proceeds in allowing the application, in that leave is hereby granted to the applicant to appeal to the court of appeal of Tanzania..."

Reading between the lines on the above extracted paragraph from the ruling of this court, it is clear that the applicant was granted his application to file his notice of appeal to the court of appeal. Now one may wonder how comes the applicant delayed to file his appeal to the court of appeal while he was already granted leave to do so?. In my view it is neither the practice nor the requirement of law that allow the applicant to file similar applications and be granted twice at the same court. Once the applicant is granted enlargement of time and leave to appeal out of time and he just stay without appealing it will imply that he has waived his right to appeal. Indeed justice requires

that there should be an end of litigation otherwise it will be an abuse of court process. In my considered view, since the applicant did not comply with the legal procedures, it is as good as saying there is no application at this court. Reference can be made to the decision of the court in **Joseph Ntongwisangue another V. Principal Secretary Ministry of finance & another Civil Reference No.10 of 2005** (unreported) where it was held that:

"in situation where the application proceeds to a hearing on merit and in such hearing the application is found to be not only incompetent but also lacking in merit, it must be dismissed. The rationale is simple. Experience shows that the litigations if not controlled by the court, may unnecessarily take a very long period and deny a party in the litigation enjoyment of rights granted by the court.

I also wish to refer the decision of the court of Appeal of Tanzania in **The Director of Public Prosecutions v. ACP Abdalla Zombe and 8 others** Criminal Appeal No. 254 of 2009, (unreported) where the court held that:

"this Court always first makes a definite finding on whether or not the matter before it for determination is competently before it. This is simply because this Court and all courts have no jurisdiction, be it statutory or inherent, to entertain and determine any incompetent proceedings."

In light of what I have observed and reasoned, that my hands are tied up by the decision of my previous colleague Judge of this court, I don't see any need for further discussing this application which is improper rather than dismissing it. I am thus of the view that on account of the improper application filed by the applicant, there is no


valid application on which this court can deal with it. From the foregoing brief discussion, I am of the settled mind that the purported application is incompetent and cannot stand as an application.

In the circumstance, since the applicant's application was invalid, it could not have founded a proper forum before this court. For the reasons stated above the application above, the application is misconceived. From my findings and reasons I have given above, I am of the settled view that since the application before me is incompetent, what then follows is to dismiss it accordingly. It is so ordered.



MAMBI, J
JUDGE
13.08.2021

Court: - Ruling delivered this day of 13th August 2021 before the parties.



MAMBI, J
JUDGE
13.08.2021