

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. LAND APPLICATION NO 72 OF 2021

*(Arising from the Decision of Mwambegele, J dated 1st November, 2012 in Land Appeal No. 27 of 2010
Originating from Mwanza District Land Housing Tribunal)*

JACOB BUSHIRI.....APPLICANT

versus

MWANZA CITY COUNCIL1ST RESPONDENT

ABDUL MZIRAY.....2ND RESPONDENT

THOBIAS ANDREW.....3RD RESPONDENT

RULING

21st Sept & 18th October, 2021

RUMANYIKA, J:.

When, with respect to judgment and decree dated 01/11/2012 of this court (Mwambegele, J, as he then was) the two in one application for extension of time within which Jacob Bushiri (the applicant) to lodge a notice of appeal and application for leave to appeal to the Court of Appeal of Tanzania was, by way of audio teleconference called on 21/09/2021 for hearing, I had to hear the parties on a jurisdictional preliminary point of

objection formally raised, and now taken by Mr. C. Mtalemwa learned counsel for Abdul Mziray and Thobias Andrew (the 2nd and 3rd respondents) respectively. Mr. Joseph Vungwa learned solicitor appeared for Mwanza City Council (the 1st respondent) and Mr. C. Matata learned counsel appeared for the applicant. I heard the 3 learned attorneys through mobile numbers 0696 352 336 and 0767971600 respectively.

Mr. C. Mtalemwa learned counsel submitted that the court had no jurisdiction to hear and determine two applications combined because leave was grantable only when a notice of appeal had been lodged. The learned counsel further submitted that in the (case of Mohamed Suleiman **Mohamed v. Amne Salum Mohamed and 10 Others**, Civil Appeal No. 87 of 2019 the Court of Appeal of Tanzania did not intend to repeal Rule 46(1) of the Court rules. The learned counsel prayed for striking out the application with costs. That is all.

Mr. C. Matata learned counsel submitted that the p.o was misconceived because Rules 46(1) and 45(a) of the Court rules needed be read together (case of **Mohamed Suleiman Mohamedi v. Amne Salum Mohamed & 10 Others** (supra).

In his rejoinder, Mr. C. Mtalemwa learned counsel submitted that the rule in the case of **Mohamed Suleiman** (supra) notwithstanding. Rule 45(a) of the Court Rules yes, but at hand it wasn't an informal application much as Rules 45A and 45(a) of the rules were distinct. That is all.

The central issue is whether, like it was the case here an application for extension of time within which one to file a notice of appeal and an application for leave of appeal could be brought and determined together.

The provisions of the Rules read;-

R.45 **notwithstanding the provisions of rule 46(1)**, where an appeal lies with the leave of the High Court, application for leave may be informally ...

46 (1) **where an application** for a certificate or **for leave is necessary, it shall be made after the notice of appeal is lodged.**

More impressing and on my side binding were the words of the highest fountain of justice in the case of **Mohammed Suleiman Mohamed** (supra) at page 8;

statutory creature. It being for the parties' convenience or otherwise it is trite law that parties conferred no jurisdiction upon the courts (case of **Mushuti Food Supply Co. Ltd v. CRDB Bank Ltd & 2 Others**, Land Case No. 5 of 2006 (HC) Bukoba) much as I agree with both learned counsel that this court had jurisdiction to entertain the application for extension of time and leave to appeal but not in one and the same proceedings (see the case of the **Reg. Trustees of Masjid Mwinyi v. Pius Kipengele & 5 Others** Civil Revision No. 2 of 2020 (CA) unreported.

The p.o is sustained. It follows therefore that the omnibus application is struck out with costs. It is so ordered.

Right of appeal explained.

S.M. RUMANYIKA
JUDGE
03/10/2021

The ruling delivered under my hand and seal of the court in chambers this 18/10/2021 in the presence of Messrs C. Mtalemwa and C. Matata learned counsel.



S.M. RUMANYIKA
JUDGE
18/10/2021