

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

MISC. LAND APPLICATION NO. 25 OF 2020

(Arising from High Court misc. Land Appeal No. 115/2016, Misc. Land Application No. 21/2017, Arising from Kigoma District Land and Housing Tribunal Land Appeal No. 58/2015 Original Land Case No. 27 of 2014 from Munyonya Ward Land Tribunal Kigoma).

SHUKRANI ABEID (Administrix of the Estate of the Late MWAYAONA HUSSEIN.....APPLICANT

VERSUS

BASHIRU IDDI.....RESPONDENTS

RULING

Date: 24/9/2021 & 05/11/2021.

BAHATI, J

This is one of the most disoriented applications I have ever come across. The applicant, Shukrani Abeid, in the capacity of Administratrix of the estate of the late Mwanyaona Hussein, filed this application seeking the following orders to wit:-

1. *That, this honourable court be pleased to grant leave to extend time within which she can apply for leave to file Notice of appeal against the Judgment of the High Court of Tanzania in Misc Land Application No. 21 of 2017 before Rumanyika J.*
2. *That, this honourable Court be pleased to grant certificate on point of law to the applicant to appeal to the Court of Appeal of Tanzania against the judgment of the High Court of Tanzania at Tabora before Mallaba J, dated 30/03/2017*
3. *Costs of and incidental to the application be provided for*
4. *Any other relief(s) as the honourable court may deem fit to grant.*

The applicant was legally represented by Mr. Samwel L. Ndanga learned counsel whereas the respondent enjoyed the service of Mr. Kabuguzi Raymond also learned advocate.

When the application was first called for hearing, the court allowed the parties to argue the application by way of written submission. In the written submission in support of the application, the applicant opted to abandon the second prayer on grant of certificate on point of law and submitted solely on the first prayer, which is on extension of time to for leave to file Notice of appeal.

To make his options clear, Mr. Ndanga insisted this court consider the first prayer alone, which is for an extension of time to file a notice of appeal against the decision of Rumanyika J delivered on 23/07/2017.

Though the applicant never attached a ruling that the first prayer is grounded, paragraph 5 of her sworn affidavit states that following the striking out of the application for leave and certificate on point of law, the applicant was desirous of challenging the High Court decision. Now, she is praying this court to grant her extension of time to lodge notice of appeal against the said judgment.

Having gone through the applicant's sworn affidavit at paragraph 4, she stated that she lodged notice of appeal timely before the High Court of Tanzania but I wonder for what reason she wants an extension of time so that she can file another notice of appeal while she successfully lodged notice of appeal. The affidavit and entire submission by the learned counsel do not state whether the notice of appeal has ever been withdrawn, either by the court or the parties. If that is not stated, it is my assumption that the notice is still pending and unexecuted.

However, paragraph 6 of the applicant's affidavit, which holds the basis of this application states three legal errors in the impugned judgment, but considering the fact that the two prayers in the chamber summons originate from two different judgments, it is not stated in which

judgment the said errors occurred. I assume that even the learned counsel was not sure of the judgment he was challenging because he never mentioned the case number where the errors occurred. Paragraph 6 of the affidavit reads: -

"That, the Honourable Judge in that Land Appeal No..... erred in law and fact in the following aspects:

- 1. That, learned Honorable Judge erred in law in not regarding that the late Mwayaona Hussein was erroneously treated as invitee in the disputed shamba*
- 2. That, the learned Honorable Judge erred in law in not considering the vital point of law that the necessary party, Saïd Simba (Vendor), was not joined in the case,*
- 3. That, the learned Honorable Judge erred in law in point (sic) considering the good title of Mwayaona Husein having occupied the land in dispute for over 37 years."*

If you look closely at the three points advanced by the applicant and all the legal issues listed at paragraph 7 of the affidavit, they are connected to a second prayer that the applicant prayed to abandon. Those points have no relation to the first prayer which is based on a judgment delivered by Rumanyika J. so they cannot be used as a basis for granting the first prayer.

For the reasons stated above, I find that the affidavit sworn by the applicant does not support the application. Therefore, I accordingly dismissed the application with cost.

Order accordingly.



A.A BAHATI

JUDGE

05/11/2021



Date: 5/11/2021

Coram: Hon. G. P. Ngaeje Ag, DR

Applicant: Represented by Advocate Mr. Lucas Ndanga.

Respondent: Represented by Advocate Amos Gahise.

B/C Grace Mkemwa, RMA

Mr. Ndanga: The matter comes for ruling.

Court: Ruling is ready.

Court: Ruling delivered in presence of the applicant's counsel, Mr. Lucas Ndanga and the respondent with his counsel Mr. Amos Gahise in the open court.



G. P. NGAEJE

Ag. DEPUTY REGISTRAR

5/11/2021

Court: Right of appeal fully explained.



G. P. NGAEJE

Ag. DEPUTY REGISTRAR

5/11/2021

