

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(IN THE DISTRICT REGISTRY OF BUKOBA)**  
**AT BUKOBA**

**MISC. LAND APPLICATION NO. 50 OF 2021**

*(Arising from the High Court of Tanzania (Bukoba District Registry) in Land Case Appeal No. 39 of 2020 and the District Land and Housing Tribunal for Bukoba at Kagera in Application No. 46 of 2019)*

**LUTIGARDA GABRIEL..... APPLICANT**

**VERSUS**

**THEOPHIL CHRISTIAN NDYEBONER..... RESPONDENT**

**RULING**

*Date of Ruling: 01.04.2022*

*A.Y. Mwenda, J.*

Lutigarda Gabriel (the applicant) through the services of the learned counsel Mr. Pereus Mutasingwa file the present application with one major prayer which reads;

*"That, leave be granted for the applicant in order to appeal to Court of Appeal against the decision of this honorable court entered by Hon. E.L. Ngingwana on 28<sup>th</sup> July 2021".*

This application is brought under **section 47(2) of the Land Dispute Court Act [CAP 216 R.E 2019]** and **section 5(1) (c) of the Appellate Jurisdiction Act [CAP 141 R.E 2019]**

In response thereto Theophil Christian Ndyebonera filed a counter affidavit to challenge this application.

The fact giving rise to this application are that the applicant successful sued the respondent before the District Land and Housing Tribunal for Kagera at Bukoba in Application No. 46 of 2019 where he was declared as the rightful owner of the Suitland. Aggrieved by the trial tribunal's decision the respondent appealed before this court in Land Appeal No 39 of 2020 where the tribunal's decision was set aside and the proceedings were quashed for being res judicata.

Dissatisfied with the judgment and decree of this court the applicant is seeking leave of this court to appeal the highest Court of the land.

In his submission in chief Mr. Pereus, the learned counsel for the applicant submitted that this is an application for leave to appeal to the Court of Appeal accompanied by chamber summons supported by an affidavit.

He submitted that it is a legal requirement of the law that leave should be acquired first before going to the Court of Appeal and that is why the applicant is seeking leave before this court. He said at para 3 and 4 of his affidavit it is stated that the applicant received the land in dispute as a gift from one Yohana Maria but this court did not consider the said evidence and it ruled out that this matter was res judicata.

He concluded by submitting that they have already filed Notice for Appeal and they thus pray this application to be granted. He cited the case of **Nurbai N.**

***Rattansi vs Ministry of water Construction Ernegy Land and Environment and Hussein Rajabali Hirji TLR [2005] 220*** to support his application.

In reply to the submission by the counsel for the applicant, the respondent Mr. Theophil Christian submitted that, he is protesting the application because the judgment was delivered on 28/7/2021 while the present application was presented for filing on 30<sup>th</sup> August 2021 so it was filed out of time.

He further submitted that Application No. 46 of 2019 had anomalies that is the Hon. Chairman Mtei ought to assign reasons for taking over the matter from Hon. Mogasa but he did not do so and for that matter the application was a nullity.

In regard to the land being given as a gift to the applicant by the said Yohana Maria respondent submitted that Yohana Maria died long way back before 1953 while the said gift was said to be given in 1985 and he did not produce any proof to that effect. He said, that case was also res judicata to Case No. 59 of 2019. He therefore concluded by praying this application to be dismissed.

In rejoinder to the submission by the respondent Mr. Pereus the learned counsel for the applicant submitted that, this application was filed within time through electronic filing system. He submitted that the date of submission before the system is counted as filing date so to him this application was not filed on 30<sup>th</sup> August 2021.

In regard to the matters raised by the respondent, the learned counsel for the applicant submitted that the respondent submitted the same before this court and that is why they are seeking leave to appeal before the Court of Appeal. He further submitted that he still insist that Yohana Maria allocated her land to the applicant and the respondent got it from one Pauline Mbezi but the confusion occurred when properties of Yohana Maria were mixed up with those of Pauline Mbezi. He therefore concluded by praying for the leave to be granted.

Having examined the submissions by both parties as well as the court records, it is high time that this court deliberate on the merits of the application.

Before going to the merits of this application the respondent raises the issue of time limitation in that this application has been filed out of time. In response thereto the counsel for the applicant said this application is within time as he filed it electronically but he did not state when exactly did this happen. This court conducted search before the Deputy register's office and found out that this application was electronically filed on 21<sup>st</sup> September 2021. Also the records shows that this application was presented for filing on 30<sup>th</sup> August 2021 that is almost 34 days from the date of judgment. It is the requirement of the law under Rule 45 (a) of the Tanzania Court of Appeals Rules 2009 that application for leave to the court of appeal shall be filed within 30 days.

From the foregoing observation this application is in competent and it is hereby struck out for being filed out of time. The applicant shall also pay costs.

It is so ordered.




  
A.Y. Mwenda

**Judge**

01.04.2022

This ruling is delivered in chamber under the seal of this court in the presence of Mr.Rereus Mtasingwa the learned counsel for the applicant and in the presence of Mr. Theophil Christian Ndyebonera the respondent.



  
A.Y. Mwenda

**Judge**

01.04.2022