

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

**MISC. CIVIL APPLICATION NO. 24 OF 2020.**

**(Originating from Land Appeal No. 25 of 2019, in the High Court of Tanzania, at Iringa, Original Application No. 78 of 2017, in the District Land and Housing Tribunal for Iringa, At Iringa).**

**BETWEEN**

**HTT INFRANCO LIMITED.....APPLICANT**

**VERSUS**

**1. JULIANO CHARLES MIKONGOMI**

**(Administrator of the Estate of**

**the late Charles Mikongomi).....1<sup>ST</sup> RESPONDENT**

**2. MIC TANZANIA LIMITED t/a TIGO LTD.....2<sup>ND</sup> RESPONDENT**

**3. ALICE BOAZ.....3<sup>RD</sup> RESPONDENT**

**RULING.**

**21<sup>st</sup> April & 15<sup>th</sup> June, 2022.**

**UTAMWA, J.**

The applicant herein, HTT INFRANCO LIMITED filed this application by way of Chamber summons under Section 47(2) of the Land Disputes

Courts Act, Cap. 216 R.E 2019 (henceforth the LDCA) and Rule 45(a) of the Tanzania Court of Appeal Rules, 2009 R.E 2019 (the CAT Rules) seeking the following orders;

- a) That, the Honourable court be pleased to grant leave to appeal to the Court of Appeal of Tanzania (the CAT) against the ruling of this Honourable court in Land Appeal No. 25 of 2019 (Hon. Matogolo, J.) delivered on 23<sup>rd</sup> June, 2020 (henceforth the impugned ruling).
- b) Costs of this application be provided for; and
- c) Any other order(s) or relief(s) as this Honourable court may deem just to grant.

The matter at hand originated in the Application No. 78 of 2017, in the District Land and Housing Tribunal for Iringa, at Iringa (the DLHT).

The application was supported by an affidavit sworn by one Michaela Herack Marandu, the applicant's Head of Legal Services. The 1<sup>st</sup> respondent (JULIANO CHARLES MIKONGOMI, as Administrator of the estate of the late Charles Mikongomi) objected the application by filing a counter affidavit. The 2<sup>nd</sup> respondent (MIC TANZANIA LIMITED t/a TIGO LTD) did not object the application. As to the 3<sup>rd</sup> respondent (ALICE BOAZ), the application proceeded *ex parte* against her since she did not enter appearance despite due service upon her.

The affidavit supporting the application basically deposed that, the 1<sup>st</sup> respondent instituted an application before the DLHT against the applicant, the 2<sup>nd</sup> respondent and the 3<sup>rd</sup> respondent. The claim in the application

was for, among other things, a declaration that, they are trespassers over the suit property (piece of land located at Lugodalutali Village in Mufindi District of Iringa Region). The DLHT decided in favour of the 1<sup>st</sup> respondent. Aggrieved by the said judgment, the applicant appealed to the High Court on 20<sup>th</sup> November, 2019. The appeal was unjustifiably struck out through the impugned ruling for being time barred. The applicant is now seeking leave to appeal to the CAT against it.

In her counter affidavit, the 1<sup>st</sup> respondent essentially deponed that, the applicant was negligent defending the matter and the impugned ruling does not need any intervention by the CAT. This is because, the law providing for limitation of time in matters of this nature is clear.

During the hearing of the application, the applicant was represented by Mr. Leonard Masatu, learned advocate. The 1<sup>st</sup> respondent was advocated for by Mr. Steward Ngwale, learned advocate. Mr. Obeid Mwandambo, learned counsel appeared for the 2<sup>nd</sup> respondent. The application was argued by way of written submissions. The learned counsel for the 2<sup>nd</sup> respondent however, did not participate in the hearing of the application for the reason that, he did not dispute it as hinted earlier.

The learned counsel for the applicant submitted in support of the application that, it is a settled law that leave to appeal to the CAT is granted only where there is a point of law inviting the determination of the CAT. He cited the cases of **British Broadcasting Corporation v. Eric Sikujua Ng'maryo, Civil Application No. 138 of 2004** and **Tanzacoal**

**East Africa Ltd v. The Minister for Energy & Minerals, Misc. Commercial Application No. 351/2015** to support his contention.

The applicant's counsel further contended that, the applicant's grounds of appeal in the intended appeal as stated in paragraphs 13(i), (ii), and (iii) of the affidavit raise issues of law of general importance that require the intervention, consideration and determination by the CAT. He went on to name the legal issues to be considered by the CAT. The first issue he mentioned is whether the provisions of section 19 of the Law of Limitation Act, Cap. 89 R.E 2019 (LLA) apply to appeals from the DLHT to the High Court. He contended that, the above named provisions provide for exclusion of time spent in waiting for copies of judgment and decree. The applicant had filed Land Appeal No. 25 of 2019 arising from the Application No. 78 of 2017 in the DLHT. The appeal was struck out (through the impugned ruling) with costs due to the preliminary objection raised by the 1<sup>st</sup> respondent that the appeal was time barred. This court wrongly held (in the impugned ruling) that Section 19(2) of the LLA can not apply to appeals from the DLHT to this court. It based that finding on the ground that, the specific law governing the time limitation of such appeals is Section 41(2) of the LDCA as amended by the Written Laws (Miscellaneous Amendment) Act No. 2 of 2016. The learned counsel for the applicant cited the cases of **Alex Senkoro & Others v. Eliambuya Lyimo (As Administrator of the Estate of Fredrick Lyimo) [2021] TZCA 12** and **Registered Trustees of the Marian Faith Healing Centre@ Wanamaombi v. The Registered Trustees of the Catholic Church Sumbawanga Diocese, Civil Appeal No. 64 of 2006 CAT at Dar es**

**Salaam** (unreported) to cement the point. He further argued that, in such precedents the CAT held that, the exclusion of the time needed to obtain the necessary documents is automatic as long as there is proof on the record of the dates of the critical events for the reckoning of the prescribed limitation period.

The learned counsel for the applicant went on to mention the second legal issue to be determined by the CAT. This is whether the time requisite for obtaining a copy of judgment and decree of the DLHT (being essential documents in accompanying the Memorandum of Appeal to be filed at the High Court) is automatically excluded in law. He submitted that, in upholding the preliminary objection this court erroneously held (in the impugned ruling) that, the time spent in procuring the copies of essential documents cannot be automatically excluded by the parties. A party should firstly lodge an application to seek extension of time and avail sufficient cause to warrant the exclusion. He added that, the right to appeal and the time within which an appeal can be preferred against the decision of the DLHT is provided for under Section 41(1) and (2) of the LDCA.

It was also the contention by the applicant's counsel that, the third proposed legal issue for determination by the CAT is whether the provisions of Section 41 of the LDCA providing for the time to appeal are subject to the LLA in view of Section 46 of that legislation. He argued that, the impugned ruling wrongly answered this issue negatively. However, it ought to have answered it affirmatively. This is because, the provisions of the LDCA provide for time limitation within which an appeal can be preferred against the decision of the DLHT. This is by virtue of section

41(1) and (2) of the LDCA. Moreover, in terms of section 51(1) of the LDCA such provisions are read together with Rule 1(10) of Order XXXIX of the Civil Procedure Code, Cap. 33 R.E 2019 (the CPC) as it was decided in the case of **Julitha Andrew Kessy v. Timothy Joseph Kaare and Another, Misc. Land Appeal No. 14 of 2017.**

The applicant's counsel thus, urged this court to grant the application since the proposed issues raise serious points of law which require intervention by the CAT.

The written replying submissions on behalf of the 1<sup>st</sup> respondent were signed by another advocate (Mr. Baraka Mbwilo, learned counsel). From such submissions, it is clear that the 1<sup>st</sup> respondent has changed mind. He is no longer objecting the application. Instead, he concedes the same. The learned counsel therefore, conspicuously submitted that, upon reading the submissions in chief by the applicant's counsel, he no longer objects the application for purposes of assisting the court in determining the matter. He however, urged the court to order for each party to bear his own costs since the applicant's counsel did not claim for any costs.

I have considered the affidavit, the submissions in chief by the applicant's counsel which are no longer objected by the counsel for the 1<sup>st</sup> respondent. In my settled opinion, the replying submissions by the counsel for the 1<sup>st</sup> respondent amounts to the withdrawal of the counter affidavit that had been previously filed in resisting the application. The present application thus, remains unopposed. This fact however, is not the only reason for granting the application. The merits of the application must

thus, still be tested in the legal weighing-scales. This is because, courts of law are enjoined to decide matters before them in accordance with the Constitution of the United Republic of Tanzania, 1977, Cap. 2 RE. 2002 and the law. They do not decide matters according to the consensus of the parties to proceedings.

The major issue for determination before me is therefore, *whether or not this application for leave to appeal to the CAT is meritorious*. Before I answer this issue, I find it suitable to outline at this juncture, some relevant principles related to the applicable law in this matter. Applications of this nature are mainly governed by section 47(2) of the LDCA and rule 45(a) of the CAT Rules as rightly indicated by the applicant in the chamber summons under consideration and as I hinted earlier. These provisions vest in the High Court the discretion to grant leave to litigants intending to appeal to the CAT. The leave to appeal is not thus, automatic. It is granted with the discretion of the court. Such discretion must nevertheless, be judiciously exercised. This was the position underlined in the **British Broadcasting case** (supra). An applicant for the leave must also demonstrate that, the intended appeal raises issues of general importance or a novel point of law or that the grounds show a prima facie or arguable appeal. This particular principle was underscored in the case of **Harban Haji Mosi and Another v. Omar Hilal Seif and Another, Civil Reference No. 19 of 1997, CAT** (unreported).

Furthermore, the CAT in the case of **Lazaro Mabinza v. The General Manager Mbeya Cement Co. Ltd, Civil Application No. 1 of 1999 CAT at Mbeya** (unreported) observed that, leave to appeal should

be granted in matters of public importance and serious issues of misdirection or non- direction likely to result in a failure of justice. The law further guides that, the court is enjoined to carefully scrutinize the application to see whether there is an arguable case meriting the consideration of the CAT; see **Gaudencia Mzungu v. IDM Mzumbe, Civil Application No. 94 of 1999** (unreported) where the court further held that;

“...leave is not granted because there is an arguable appeal. There are always arguable appeals. What is important is whether there are prima facie, grounds meriting an appeal to this Court. The echo stands as guidance for the High Court and Court of Appeal.”

In the matter at hand, it is not disputed that the same arises from a land dispute in the DLHT. The matter is thus, governed by the provisions of the LDCA. It is also not disputed that, section 41(2) of the same legislation provides for the 45 days' time limitation in filing appeals of the nature under discussion. Likewise, it is not in squabble that the same section vests in this court the powers to extend the time for filing the appeals. Furthermore, it is not quarrelled that the applicant was provided with the correct essential documents of the DLHT belatedly and that, the same were necessary for her appeal. She then filed the appeal as soon as she obtained the documents. Nevertheless, the appeal was later struck out on grounds of time limitation through the impugned ruling. It is also not in controversy that, section 19 of the LLA provides for the exclusion of the time spent in obtaining essential documents for appeals.

In the matter at hand, the record shows that, my brother Judge who made the impugned ruling appreciated all the undisputed facts narrated



above. Nonetheless, he was of the view that, since the LDCA was the specific Act governing land disputes, section 19 of the LLA could not apply to the matter at hand, being a land matter. These provisions could not thus, afford to the applicant an automatic exclusion of the time spent in obtaining the necessary documents from the DLHT. In my considered view, the position held by my brother was not in tandem with the holding by the CAT in the **Alex Senkoro case** (supra). In that precedent the CAT essentially held that, the principle of exclusion of time embodied under section 19(2) and (3) of the LLA applies in civil proceedings and can be extended to criminal proceedings, and the exclusion is automatic. In fact, it must be born in mind that, the **Alex Senkoro case** involved a land dispute which is also governed by the LDCA like the matter under consideration. In that precedent the CAT observed further, and I quote it (from page 11-12) for the sake of a readymade reference:

“We entertain no doubt that the above sub-sections expressly allow automatic exclusion of the period of time requisite for obtaining a copy of the decree or judgment appealed from the computation of the prescribed limitation period. Such an exclusion need not be made upon an order of the court in a formal application for extension of time. Indeed, that stance was taken recently in **Mohamed Salimini v. Jumanne Omary Mapesa**, Civil Appeal No. 345 of 2018 (unreported) where the Court affirmed that section 19 (2) of the LLA obliges courts to exclude the period of time requisite for obtaining a copy of the decree appealed from. ...the exclusion is automatic as long as there is proof on the record of the dates of the critical events for the reckoning of the prescribed limitation period. For the purpose of section 19 (2) and (3) of the LLA, these dates are the date of the impugned decision, the date on which a copy of the decree or judgment was requested and the date of the supply of the requested document.”

In the matter under discussion, it is also clear that, though section 41(2) of the LDCA provides for time limitation and vests powers to this court to


extend the time, it does not provide for any exclusion of time like the one provided under section 19(2) and (3) of the LLA. Indeed, no any other section of the LDCA provides for that principle of exclusion. This arrangement of the law, in my settled view, justified the applicant in excluding the time for obtaining the necessary documents for his appeal automatically before he filed the appeal. This particular view is cemented by the legal stance that, where all or some aspects related to time limitation are not guided by a given (specific or applicable) written law, it is legally taken that, the legislature intended to make the provisions of the LLA applicable to that specific or applicable written law. Resort should, thus, be sought from it (the LLA); see section 46 of the LLA and the holding by the CAT in the case of **Hezron Nyachiya v. Tanzania Union of Industrial Commercial Workers and another, Civil Appeal No. 79 of 2001** (unreported).

It must further be noted here that, decisions by the CAT like those cited above, e. i the **Alex Senkoro case** and the **Hezron Nyachiya case** are binding to this court by virtue of the Common Law doctrine of *stare decisis* which also applies to our legal system; see the holding by the CAT in the case of **Jumuiya ya Wafanyakazi Tanzania v. Kiwanda Cha Uchapishaji cha Taifa [1988] TLR. 146**. My learned brother who made the impugned ruling and I, are therefore, enjoined to follow such precedents made by the CAT.

Owing to the above reasons, I am of the settled opinion that, in fact, the issues raised by the learned counsel for the applicant in the affidavit and agreed by the first respondent's counsel call for the attention of the

CAT as per the principles of law highlighted above. I therefore, answer the issue posed above affirmatively that, this application for leave to appeal to the CAT is meritorious. It is consequently granted. Leave is therefore granted to applicant to appeal to the CAT as per the law.

As to costs, the law is clear that, costs are awarded at the discretion of the court to be exercised judiciously. The general rule on costs is that, they follow event unless there are good reasons to be recorded by the court for departing from this general rule; See section 30 of the CPC and the decision by the CAT in the case of **Njoro Furniture Mart Ltd v. TANESCO [1995] TLR. 205**. In the case at hand, the reasons given by the learned counsel for the 1<sup>st</sup> respondent herein above are not sufficient enough to wave the costs completely since in the chamber summons the applicant prayed for costs to be provided for. Nevertheless, since the respondent withdrew his objection upon the applicant's counsel filing his submissions in chief, that course amounted to a mitigating factor in favour of the 1<sup>st</sup> respondent as far as costs are concerned. The 1<sup>st</sup> respondent shall thus, pay only 50% of the costs upon the same being taxed. It is so ordered.



JHK UTAMWA  
JUDGE

15/06/2022

15/06/2022.

CORAM; JHK. Utamwa, Judge (By virtual court while in Njombe Resident Magistrate's Court).

For applicant: Mr. Martin Mdoe, advocate (by virtual court while in Dar es Salaam).

For 1<sup>st</sup> respondent: Mr. Baraka Mbwilo, advocate (by virtual court while in Mbeya).

2<sup>nd</sup> respondent: Absent.

3<sup>rd</sup> respondent: Absent.

BC; Ms. Gloria. M.

Court: ruling delivered through virtual court (while the presiding Judge is in the Court of Resident Magistrate of Njombe, at Njombe) in the presence of Mr. Martin Mdoe, learned advocate for the applicant (while in Dar es Salaam) and Mr. Baraka Mbwilo, learned counsel for the first respondent (while in Mbeya), this 15<sup>th</sup> June, 2022. The absent respondents be notified of this ruling.



JHK. UTAMWA.  
JUDGE  
15/06/2022.