

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

**MISC. LAND APPLICATION NO. 32 OF 2021**  
*(Originating from Land Appeal No. 32 of 2020)*

**GUMBA ADAMU KASOMO** (The Administrator of the Estate of the Late  
**ADAMU SELEMANI KASOMO) ..... APPLICANT**

**VERSUS**

**LUCKA MLAGALA ..... RESPONDENT**

*19/7 & 25/8/2022*

**RULING.**

**MATOGOLO, J.**

This ruling is in respect of an application for leave to appeal to the Court of Appeal which was filed by the applicant one Gumba Adamu Kasomo who lost in Land Appeal No. 32 of 2020.

In this application the applicant through his advocate Mr. Leonard Lazaro Sweke is praying for leave of this court so that he can appeal to the Court of Appeal of Tanzania.

The application is by way of chamber summons made under section 5(1)(c) of The Appellate Jurisdiction Act, [ Cap. 141 R.E 2019], section 47 (2) of the Land Disputes Courts Act, [Cap. 216 R.E 2019] and any other enabling provision (s) of the law. The application is supported by an affidavit sworn by Gumba Adamu Kasomo. The applicant has raised three (3) points worth for consideration by the Court of Appeal as follows:-

- a. That, the Honourable Judge erred both in law and fact by upholding the decision of the District Land and Housing Tribunal for Iringa at Iringa that the preliminary objection raised by the Counsel for the Respondent has merit failing to take into account that the cause of action in the impugned matter arose on 31<sup>st</sup> day of October, 2019 when the Respondent instituted proceedings in Mlenge Ward Tribunal against the Applicant.
- b. That, the Honourable Judge erred both in law and fact by upholding the decision of the District Land and Housing Tribunal for Iringa at Iringa dismissing the Appeal before him without stating who is the lawful owner of the suit land.
- c. That, the Honourable Judge erred both in law and fact when he upheld the decision of the District Land and Housing within which the Tribunal decided the same by being tied up with legal technicalities.

During the hearing parties were represented, the applicant was represented by Mr. Leornard Sweke the learned Advocate and the Respondent enjoyed the services of Mr. Jally Mongo the learned Advocate.

Submitting in support of the application Mr. Sweke first prayed for this Court to adopt the grounds set out in the applicant's affidavit and relief sought in the chamber summons to be part of his submission.

He said the applicant is the son and administrator of the deceased estate of his father Adam Seleman Kasomo who passed away on 20/02/1994. The applicant was appointed administrator of the deceased estate on 30/12/2019.

The deceased Adam Seleman Kasomo left properties including the land in dispute of 20 acres located at Kilangililo hamlet Kisange village in Mlenge Ward Pawaga Iringa rural district. The deceased obtained the land through allocation by the village council in 1980.

He went on submitting that, the deceased has been using that land since then up to 1994 when he died. The deceased family has been using that land since 1994 without any interference but on 31/10/2019 without any justification the respondent sued the applicant at Mlenge Ward case No. 13 of 2019 claiming to be administrator of the estate of his deceased brother Hussein Mlagala. And that the deceased Hussein Mlagala was the lawful owner of the land in dispute which was allocated to him by the village council by the village Land allocation committee of Kisange village on 25/10/2014.

He went on submitting that, the Ward Tribunal awarded him right on 07/01/2020. Being aggrieved applicant appealed to the District Land and Housing Tribunal for Iringa in appeal No. 2 of 2020.

In that appeal the respondent's advocate conceded to the 1<sup>st</sup> ground of appeal that he had no locus to file the case before the Ward Tribunal and prayed to the District Land and Housing Tribunal to quash and nullify the proceedings of the Ward Tribunal. That prayer was supported by the appellant's advocate. The District Land and Housing Tribunal nullified the proceeding of the Ward Tribunal and advised the parties to commence another proceeding according to the law for whoever is interested. The respondent trespassed to the suit land and started to utilize it saying that he is the lawful owner after he has won the case. The applicant required the respondent to harvest the crops he has planted in the land.

But the respondent refused and continued to use it and hired part of the land saying it belongs to him.

On 02/04/2020 the applicant filed a case at the District Land and Housing Tribunal, Application No. 34 of 2020 accompanied with application No. 48 of 2020.

In the main suit the advocate for the respondent raised notice of preliminary objection that the suit was time barred on the ground that the same was filed after expiry of 12 years from the death of Adam Seleman Kasomo.

The District Land and Housing Tribunal sustained the objection and dismissed the application without considering that the cause of action arose on 31/10/2019 when the respondent commenced proceedings at

Mlenge Ward Tribunal. On 12/11/2020 the applicant after being aggrieved, appealed to this court in Civil Appeal No. 32 of 2020.

This court on 23/11/2021 dismissed the appeal by upholding the decision of the District Land and Housing Tribunal. Mr.Sweke submitted that, the applicant intends to lodge an appeal to the Court of Appeal of Tanzania seeking intervention of the Court of Appeal to examine that the trial judge erred in law and fact to uphold the decision of the District Land and Housing Tribunal for Iringa for sustaining the preliminary objection raised by the advocate for the respondent. This is because the cause of action accrued on 31/10/2019 after the respondent had sued the applicant at Mlenge Ward Tribunal in which the respondent sued in the capacity of administrator of his deceased brother estate. This fact is also found at paragraph 6(9) (1) of the District Land and Housing Tribunal application.

In the Ward Tribunal the respondent won the case. But the applicant appealed to the District Land and Housing Tribunal where the advocate for the respondent conceded to the appeal as can be seen at paragraph 6(a)(vi) and (vii) of the application No. 30 of 2020. That statement was not disputed. The District Land and Housing Tribunal erred to sustain the Preliminary Objection raised by the respondent by failure to consider:-

- (i) That the preliminary objection was not on point of law contrary to what was decided in ***Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd (1969) EA 696.***
- (ii) The District Land and Housing Tribunal erred to discuss as to when the cause of action arose which was 31/10/2019. This court also misdirected itself by falling in the same error and uphold the decision

of the District Land and Housing Tribunal thus going against several decision of the Court of Appeal including the case of ***Barelia Karangi rangi vs. Asteria Nyalambwa***, Civil Appeal No. 237 of 2017 CAT (unreported). It is the applicant's view that as the cause of action arose in 2019 the District Land and Housing Tribunal ought to have heard the matter on merit.

- (iii) The learned Honourable Judge erred to uphold the decision of the District Land and Housing Tribunal and discuss the appeal without deciding as to who was the lawful owner of the land in dispute.

He went on submitting that, if you read the evidence of the respondent both in the Ward Tribunal in Case No. 13 of 2019 and Civil Application No. 34 of 2020 of the District Land and Housing Tribunal the same contradict. Before the Ward Tribunal the respondent claimed to be the administrator of the deceased estate of his brother Hussein Mlagala who was the owner of the disputed 20 acres of land, who was allocated by the Land allocating committee of Kisanga village on 25/10/2014. But in his Written Statement of Defence para 5 in Application No. 24 of 2020 in the District Land and Housing Tribunal he claimed that the Land in dispute is measure 21 acres and possessed by six people allocated to them by the Kisanga village allocating committee on 25/10/2014.

He submitted that, if the land was possessed by six people the District Land and Housing Tribunal was supposed to order for the other five people to be joined in the case as third parties per O. I. r. 10 (2) and r. 14(1) CPC, as it was also held in the case of ***Conrad Berege vs. Registrar of Cooperative societies and A.G (1998) TLR 22.***

(iv) The trial Judge erred in law and fact to uphold the decision of the DLHT which was based on technicalities.

He went on contending that, looking at the decision of the DLHT the same is hinged on sections 3(1), 9(1), 35 and item 22 of part I of the schedule to the Law of Limitation Act Cap. 89 R.E. 2019, in which the DLHT did not consider as to when the cause of action arose. He said this decision is against Article 107 (1)(e) of the United Republic of Tanzania of 1977 as amended from time to time and also against the decision of the case of ***Yakobo Magoiga Gichere vs. Peninah Yusuph***, Civil Appeal No. 55 of 2017 CAT (unreported).

Basing on the above submission Mr. Sweke prayed to this court to grant leave to the applicant to appeal to the Court of Appeal also for costs and any other relief the court may deem fit.

In reply Mr. Mongo first of all prayed for this court to adopt their counter-affidavit filed on 14/03/2022.

He opposed the application for leave to appeal to the Court of Appeal on the ground that there is no basis for granting leave in this case.

Mr. Mongo submitted that, an application for leave to appeal to the Court of Appeal it is not automatic. In order the applicant to be granted leave must give sufficient reason which is serious one be on point of law or fact to be considered by the Court of Appeal where there is no serious point of law and facts the application will not be granted. The basis is that the Court of Appeal is not required to entertain case which lack merit.

To support his argument, he cited the case of ***Kadili Zahoro Administrator of the Estate of the Late Bahati Ramadhani Mponda) And Others vs. Mwanahawa Suleiman***, Civil Application No. 137/01 of 2019 CAT (unreported) particularly at page 5-6). Also the Application by the applicant was made under Section 5(1)(c) of the Appellate Jurisdiction Act.

According to that provision the same requires that the grounds for leave should be that decided by the court. If that ground was not decided by the lower court you cannot seek leave.

He went on arguing that, looking at the applicant's affidavit at page 4 para 18 part (b) what is said the Court of Appeal should consider in Land Appeal No. 32 of 2020 the decision sought to be challenged in the Court of Appeal was not decided by this court, that is it is not the issue/matter decided by this court.

The basis was that as the suit was filed out of time (time barred) the court could not indulge itself on the merit of the case.

Regarding paragraph 18(a) of the applicant's affidavit that this court erred to uphold decision of the DLHT on the ground that the case was time barred, Mr. Mongo submitted that, the decision of this court on that issue was correct because the decision of this case was based on Section 9(1) of the Law of Limitation Act. But also this court while deliberating on section 9 (1) referred the decision of the Court of Appeal while discussing on the same provision.

Mr. Mongo argued that, in its decision this court at page 13 referred the decision of the Court of Appeal in ***Haji Shamari vs. Zainab Rajab***,



Civil Appeal No. 91 Of 2001 (unreported), in which the Court of Appeal said that where a dispute is to recover deceased land cause of action accrues from the death of the deceased.

He said in the grounds of appeal the learned counsel for the applicant he did not dispute that the applicant was claiming to recover land of his deceased father. But also there is no dispute that the applicant's father died in 1994. There is also no dispute that the case at the DLHT for Iringa which was appealed to this court was filed in 2020.

He went on arguing that, by counting from 1994 to 2020 it is more than 12 years, while the time limit for a suit to recover land is 12 years per 4<sup>th</sup> schedule part I paragraph 22 of the Law of Limitation Act (LLA). According to Section 3(1) of the LLA any suit filed outside the given time shall be dismissed.

That is what the DLHT did, the decision which was uphold by this court according to the law passed by the Legislature but also according to decisions of this court and those of the Court of Appeal.

Mr. Mongo was of the considered opinion that, as the Court of Appeal has given a decision or issue of limitation, the issue raised in paragraph 18(a) of the applicant's affidavit has no merit for this court to grant leave so that the same can be considered by the Court of Appeal as the position of the law has been already set by the Court of Appeal.

Mr. Mongo submitted further that, the argument by Mr. Sweke that the cause of action arose on 31/10/2019 is baseless because in that case the applicant was claiming to receive deceased land and not to recover his own land.

He said there are two different causes of action and the time limitation differ.

As to ground No.3, which is also reflected in paragraph 18(c) of the applicant's affidavit that the DLHT decision was based on technicalities.

Mr. Mongo submitted that, issue of time limitation is not technicalities this was also stated by this court in its decision in Land Appeal No. 32 of 2020, the decision which is sought to be challenged in the Court of Appeal, this court clearly said issue of time limitation involved jurisdiction of the court.

If the case was filed out of time the court lacks jurisdiction to entertain it. Even this ground lack merit for this court to grant leave so that the same can be considered by the Court of Appeal.

The Court of Appeal itself in a number of cases has decided that time limitation touches jurisdiction of the court.

He went on submitting that, he has no problem with the requirements of Article 107(1)(e) of the Constitution but the circumstances of the case that cited Article is misplaced as he has said, issue of time Limitation is not technicality.

Under such circumstances he prayed for the application to be dismissed with costs for the applicant's failure to advance serious issue of law and fact to be considered by the Court of Appeal. He also prayed to this court to be guided by the decision of ***Kadili Zahoro*** (supra) particularly at page 9.

Mr. Mongo concluded by submitting that, the learned counsel in his submission has explained matter not canvassed in our pleadings, he prayed for the court not to consider them.

In rejoinder Mr.Sweke submitted that, he agree with what Mr. Mongo submitted that grant of leave to the Court of Appeal is not automatic, it is upon the applicant to demonstrate sufficient and serious point of law and facts to be considered by the Court of Appeal. He also agreed with him that the Court of Appeal cannot entertain appeal which has no merit. But he disagreed with him that in this application there is no good ground to be considered by the Court of Appeal.

He said in his submission he has clearly explained circumstances under which this court can grant leave to the applicant to appeal to the Court of Appeal. The learned counsel for the respondent has complained of paragraph 18 (b) of the applicant's affidavit that issue contained therein was not decided by this court. To remind the leaned counsel all grounds contained in paragraph 18(a)(b) and (c) were dealt with by this court in Land Appeal No. 32 of 2020. The same were placed before this court for decision. This court therefore discussed them and decided on them. They therefore qualify under Section 5(1)(b) of the Appellate Jurisdiction Act to be considered by the Court of Appeal. That is should have been decided in the decision sought to be challenged. On the issue of time limitation, the cases cited by the respondent's advocate are distinguishable to the circumstances of the present case.

In this case it is the respondent who first filed the case before the Ward Tribunal. There is no dispute that the applicant's deceased father died in 1994. The cause of death accrued on 31/10/2019 when the applicant was sued by the respondent.

It is the position of the law that right of action accrues from the date of disposition of the land in question. This is in accordance to item 22 part I to the schedule of the LLA.

Mr. Sweke was of the view that, to discuss Section 9(1) of the LLA is not correct according to the circumstances of this case. He argued that, time starts to count from the date of dispossession. This is because there has been no dispute over the land from 1994 when the applicant's deceased father died up to the time the respondent filed a case against the applicant over the land.

With regard to the case of ***Haji Shomari vs. Zainab Rajabu*** as referred by Mr. Mongo, Mr. Sweke was of the view that, the circumstances of that case are different to that of this case.

He said he agree with the learned counsel that issue of time Limitation is not legal technicality. But while talking about circumstances of this case the issue of time limitation was improperly interpreted taking into account the circumstances of this case. Both the DLHT and this court misdirected in their decision.

He argued that, it is true there is a difference of cause of action in recovering deceased land which accrues from the death of the deceased but the dispute must have existed during the life time of the deceased. But parties kept quiet until 12 years expired. This was also discussed in the

case of ***Barelia Karangirangi***. The dispute in that case is like the dispute in the present case. In this case from the deceased death in 1994 it is until 2019 when the respondent sued the applicant over the suit land. The cause of action therefore accrued from the date the applicant was dispossessed of the land. That is why he is saying section 9(1) of the LLA is inapplicable. But for a person claiming to recover his land what is looked at is 12 years from the date he was dispossessed of the said land. It is his opinion that Section 9(1) is inapplicable.

He went on submitting that, he disagrees with Mr. Mongo learned advocate that he submitted on matters not contained the pleadings. All what he has submitted are within the chamber summons and affidavit filed to this court.

He concluded by insisting this court to grant leave to the applicant to appeal to the Court of Appeal with costs and any relief the court may deem fit to grant.

Having heard the rival submissions by the parties and having carefully perused the court records, the issue to be determined here is whether this application has merit. In this application the applicant has raised three (3). I will discuss them serially as presented, but before doing so I think it is important to highlight on the legal position in granting leave.

In applications for leave to appeal to the Court of Appeal like this, the law is settled. Leave may be granted where there is a point of law, or the intended appeal stands a good chance of success or where there is a point of public importance to be determined by the Court of Appeal.

In the case of ***Kadili Zahoro (Administrator of the Estate of the late Bahati Ramadhani Mponda and Another versus Mwanahawa Selemani*** (supra) at page 6 when the Court of Appeal referred its previous decision in the case ***Harban Haji Mosi and Another versus Omar Hilal Seif and Another***, Civil Reference No. 19 of 1997 (unreported) the Court of Appeal stated that:-

*"Leave is granted where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceedings as a whole reveal such disturbing features as to require the guidance of the Court of Appeal. The purpose of the provision is therefore to spare the Court the specter of unmeriting matter and to enable it to give adequate attention to cases of true public importance".*

The same principle was reiterated in the case of ***British Broadcasting Corporation versus Eric Sikujua Ng'maryo***, Civil Application No. 133 of 2004 (unreported) where it was stated that:-

*"Needless to say, leave to appeal is not automatic. It is within the discretion of the court to grant or refuse leave. The discretion must, however, be judiciously*

*exercised on the materials before the Court. As a matter of general principle, leave to appeal will be granted where the grounds of appeal raises issues of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal (see **Buckle versus Holmes (1992)** ALL E.R Rep 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or hypothetical, no leave will be granted”.*

Having seen the legal position regarding applications for leave to appeal to the Court of appeal, I’m now bound to determine whether the applicant has advanced good cause for this court to grant leave to appeal to the Court of Appeal.

It is the applicant’s position in respect of the first intended ground of appeal that, as the decision of the DLHT is hinged on sections 3(1), 9(1), 35 and item 22 of Part I of the Schedule to the Law of Limitation Act Cap 89 R.E 2019, the DLHT did not consider as to when the cause of action arose.

Mr. Sweke submitted further that, even though the applicant’s father died in 1994, the cause of action accrued from the date of dispossession. His argument was based on the fact that, there has been no dispute over

the suit land from 1994 when the applicant's deceased father died up to the time respondent filed the case against the applicant. The learned counsel relied on the case of ***Baleria Karangi rangi versus Asteria Nyalwambwa*** (supra).

Mr. Jally Mongo's contention is that, the Counsel for the applicant did not dispute that the applicant was claiming to recover land of his deceased father, and there is no dispute that the applicant's father died in 1994. He said, there is also no dispute that, the case at the DLHT for Iringa was filed in 2020, more than 12 years. His argument is that, the time limit to recover land is 12 years as per 4<sup>th</sup> Schedule Part I paragraph 22 of the Law of Limitation Act (LLA). He said according to Section 3(1) of the LLA, any suit filed outside the given time shall be dismissed. He argued further that, the applicant's argument that, cause of action arose on 31/10/2019, is baseless because the applicant was claiming to recover deceased land and not to recover his own land.

The court record is quite clear that, the deceased one Adam Seleman Kasomo died on 20<sup>th</sup> day of February, 1994 and on 30<sup>th</sup> day of December, 2019 the applicant was appointed as an administrator to administer the Estate of Adam Seleman Kasomo. It was on 02<sup>nd</sup> day of April 2020 when Gumba Adamu Kasomo filed the suit before the DLHT, in application No.34 of 2020.

Mr. Sweke was of the considered view that, the DLHT erred to dismiss the suit basing on the reason that, the suit was time barred while



the cause of action arose on 31/10/2019 when the respondent sued the appellant at Mlenge Ward Tribunal.

The records reveal that, the late Adamu Selemani Kasomo was utilizing the suit land since 1980 to 1994 undisturbed, and his family after the demise of the late Adamu Selemani Kasomo used the disputed land since 1994 up to 2015, when the Kisanga village Chairman unsuccessfully instituted a criminal case No. 126 in Kimande Primary Court against Gumba Adamu Kasomo and 11 Others excluding his late brother one Hussein Rashidi Mlagala alleging that they encroached on the Kisanga Village Land.

On 31<sup>st</sup> day of October, 2019 the respondent herein instituted proceedings in Mlenge Ward Tribunal against Gumba Adamu Kasomo in application No. 13 of 2019 alleging to be the Administrator of the Estate of his late brother one Hussein Rashidi Mlagala being the lawful owner allocated the same by the Kisanga village land allocation committee way back on 25<sup>th</sup> October, 2014. The case was decided in favour of Lucka Mlagala. The applicant after being aggrieved by the decision of the Ward Tribunal he appealed to the DLHT, where the case was dismissed as the applicant herein had no locus stand. After being appointed as an administrator he filed the case in the DLHT, the same was dismissed for the reason that, it was time barred. The legal position as to when right of action to recover deceased land accrues is provided under section 9(1) of the LLA.

Section 9 (1) provides that:-

*“where a person institutes a suit to recover land of a deceased person, whether under the will or intestacy and the deceased person was, on the date of his death, in possession of the land and was the last person entitled to the land to be in possession of the land, the right of action shall be deemed to have accrued on the date of his death”.*

Therefore, in terms of section 9(1) of the Act, the right of action accrued on the date of death of the appellant’s father on 20/02/1994. And under item 22 part 1 of the 1<sup>st</sup> schedule of the Law of Limitation Act, the period of Limitation prescribed for a suit to recover land is twelve (12) years.

The legal position regarding cause of action to recover deceased land therefore accrues from the date of death of the deceased as provided under section 9(1). It does not wait until one suing to recover the same land as suggested by Mr. Sweke. It appears Mr. Sweke is confusing on two scenarios, that is a scenario where a person is claiming to redeem his/her land after being dispossessed by another person and a scenario where a person sues to recover deceased land. The two scenarios are different and are regulated by two different provisions. For deceased land subsection (1) of section 9 apply. For a second scenario subsection (2) of section 9 apply. The provision that the Court of Appeal discussed in ***Barelia Karangirangi***

**case** is section 9(2) as can be seen from page 11 last paragraph to page 12. Section 9(2) provides that:-

*"Where the person who institutes a suit to recover land or some person through whom he claims has been in possession of and has while entitled to the land, been disposed or has discontinued his possession, the right of action shall be deemed to have accrued on the date of dispossession or discontinued".*

I have no quarrel with that as that is the position of the law. This provision is not applicable to suits to recover deceased land, but apply to a situation where a person in occupation of the land is dispossessed that that land or his possession is discontinued. That is what was also discussed in **Barelia Karangirangi case**, which is distinguished from the facts of the present case. However for the present case the applicable provision is section 9(1) as reproduced above.

It is not correct as it was submitted by Mr. Sweke learned advocate that section 9(1) is inapplicable but the opposite is the truth. I agree with Mr. Mongo that, the cause of action in recovering the deceased land accrues after the demise of the deceased. In the case of **Haji Shomari versus Zainabu Rajabu**, (supra), the Court discussed section 9(1) of The Law of Limitation Act, only that the Court allowed the appeal on the ground that, at the time when the deceased dying the appellant was a minor, nine years old and not attained age of majority to have capacity of suing, for that reason the period of Limitation started to run after the appellant has attained age of majority.

Now looking at the argument by Mr. Sweke in this application and the position taken by this court in Land Appeal No 32 of 2020, what is the correct legal position. But by the decision of the trial Tribunal and that of the 1<sup>st</sup> appellate court that issue has been already settled. For that reason, it is my opinion that, this is not a point of law worth for consideration by the Court of Appeal. The Court of Appeal had already given guidance in respect of this issue in the case of **Haji Shomari vs. Zainabu Rajabu** (supra). Granting leave to the applicant to appeal on the same issue already settled is wastage of the Court precious time. The Court itself has clearly said in the case of **Harban Haji Mosi and Another vs. Omar Hilal Seif and Another**, (supra), that:-

*".....the purpose of the provision is therefore to spare the Court the specter of unmeriting matters to enable it give adequate attention to cases of true public importance".*

Regarding 2<sup>nd</sup> issue for failure by this court to state as to who is the owner of the land in dispute. I think, without wasting time this issue does not qualify to be placed before the Court of Appeal because it is not a point of law nor is it a novel thing nor of general importance to be considered by the Court of Appeal. That issue is not among issues deserve attention of the Court of Appeal as not every case decided by this court deserve to be appealed to the Court of Appeal. This was also resolved by the 1<sup>st</sup> appellate court in the impugned judgment. Once the trial Tribunal has come to the finding that the suit is time barred, it could not go further to discuss on the issue of ownership as already to that point it lacked jurisdiction. Even the

1<sup>st</sup> appellate court could not discuss that issue for simple reason that an appeal before it was incompetent one.

As to the third issue for the 1<sup>st</sup> appellate relying on technicalities in its decision, this issue is baseless as issue of time limitation is not technicality as the same go to the jurisdiction of the Court. The applicant's counsel himself has conceded that in his rejoinder submission. This was also aptly explained in the case of ***Tanzania Roads Agency and Another vs. Jonas Kinyagula***, Civil Appeal No. 472 of 2020, CAT, at page 13 the court has this to say:-

*"We subscribe to the above cited authority. In this case since the suit was lodged far beyond the prescribed time (12 months) it was time barred, and hence, the High court lacked jurisdiction to entertain it.*

*Since the trial court entertained an incompetent suit, the whole proceedings and judgment are a nullity".*

This apply to the application at hand, after find that the suit of time barred, the DLHT dismissed the same as it was incompetent before it, hence it has no jurisdiction to entertain it in any way that what it did, to dismiss it. Equally the 1<sup>st</sup> appellate court had no jurisdiction to entertain it.

Having demonstrated as herein above, this application lack merit, the applicant has failed to raise and support arguable grounds to be

entertained by the Court of Appeal. The application is hereby dismissed with costs.

It is so ordered.



  
**F.N. MATOGOLO**

**JUDGE**

**25/8/2022**

Date:	25/08/2022
Coram:	Hon. F. N. Matogolo –Judge.
Applicant:	Absent
For the Applicant:	Absent
Respondent:	Present
For the Respondent:	Jally Mongo – Advocate
C/C	Grace

**Mr. Jally Mongo - Advocate.**

My Lord I am appearing for the Respondent. But I am also holding brief for Mr. Leonard Sweke who represents the applicant. The application is for ruling, Mr. Sweke advocate was present before this court but he has another case for hearing before the District Land and Housing Tribunal. He has asked me to hold his brief. That is all

**COURT:**

Ruling delivered.



  
**F. N. MATOGOLO,**

**JUDGE.**

**25/08/2022.**