

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

MISC. LAND APPLICATION NO. 39 OF 2021
(Arising from Land Appeal No. 67 of 2016 of the Shinyanga High Court)

ANASTAZIA JOSEPH.....APPLICANT

VERSUS

HILDA MBOJE *(Administrator of the estate*

of the late Mboje Shoto)..... RESPONDENT

RULING

7th June & 15th July 2022

MKWIZU, J.:

The applicant has filed this application seeking leave to appeal to the Court of Appeal section 5(1) (c) of the Appellate jurisdiction Act and Rule 45(a) of the Court of Appeal Rules 2009. It is supported by an affidavit sworn by the applicant on 27th September 2021. Mr. Deya Paulo Outa advocated for the respondent through a counter-affidavit opposing the prayer.

The applicant was present in court in person during the hearing and she personally argued the application and Mr. Outa was in attendance for the respondent. The applicant's submissions are brief. She only urged the court to consider his application without more.

Having adopted his counter-affidavit, Mr. Outer argued that, in an application of this nature, the court is doing a screening exercise looking at whether there are points of sufficiency importance for the Court of

Appeal's decision as stated in **Nurbhai N. Rattansi v. Ministry of Water Construction, Energy, Land and Environment & Another**,(2005) TLR 220 and **Simon Kabaka Daniel V Mwita Marwa Nyang'anya & 11 others**,(1989)TLR 64. He contended further that, in this application, the applicant has failed to show the points of sufficiency importance for the Court of Appeals decision. The High court decision was based on the law of limitation Act where the appeal to this court was filed on 25/8/2016 against the decision dated 1/4/2016 and 19/8/2019, the first decision being on the main case while the second decision was a result of an application for setting aside the default judgment.

While admitting that, the decision by this court was only with respect to the default judgment dated 1/4/2018, Mr. Outa stressed that having dismissed the appeal in respect of the main case, then laboring on interlocutory matters would be a futile exercise. He on this cited to the court the decision Between Martha **Iswalile Vicent Kahabi V Marietha Salehe and 3 others**, Civil Application No 5 of 2012 CAT- Mwanza (unreported) and prayed for the dismissal of the application with costs.

As rightly argued by Mr. Outa, the law in our jurisdiction is settled with respect to an application for leave to appeal to the Court of Appeal. Leave is only granted where there is a point of law worth consideration by the Court of Appeal. This was stressed in **Nurbhai N. Rattansi v. Ministry of Water Construction, Energy, Land and Environment & Another** case (supra) where the court held :

"In determining an application for leave to appeal to the Court of Appeal, the Court must ascertain if there is a legal point worth being considered by the Court of Appeal."

According to paragraph 3 of the applicant's affidavit in support of the application the applicant intends to challenge the decision of this court on the following issues:

- i. That, in the view of the applicant the presiding judge misdirected herself when she failed to consider that the learned chairman was wrong by entering the default judgment against the applicant in Land Application No. 4/2016 without declaring the lawful owner of the suit premises.
- ii. That, the presiding judge misdirected herself when she failed to put into account that the learned chairman wrongly entered the default judgment against the applicant as the same was not served with a copy of that Land Application No. 4/2016 so as to file her written statement of defence.
- iii. That, the presiding judge misdirected herself when she held that the Land Appeal No. 67 of 2016 was filed beyond the statutory time limit of 45 days while the ruling in Misc. Land Application No 70 of 2016 was delivered on 19.08.2016 and the same filed an appeal against the said ruling on 25.08.2016.
- iv. That, the presiding judge misdirected herself as she failed to consider that an application for setting aside default judgment arising from Misc. Land Application No. 70 of 2016 and not the Land Application No. 4 of 2016.

I have curiously considered all the points raised above and the parties' submissions. It is as observed by Mr. Outa that the decision by this court was on the preliminary objection that attacked the appeal for being time-barred. According to the records, the applicants' appeal was against two

decisions, default judgment in land appeal No. 4 of 2014 and a decision rejecting an application for setting aside the default judgment in land Application No. 70 of 2016.

There were two preliminary objections preferred by the respondent in that appeal, one was an issue of time limitation made specifically against the decision in Land Application No 4 of 2016, the main decision, and the second Preliminary objection was directed to the decision in Land Application No. 70/2016- an application for setting aside the default judgment attacking it for being brought under a wrong provision of the law. The applicant's appeal was dismissed for being time-barred.

The applicant's grievance pointed out in items(i) and (ii) of paragraph 3 of the applicant's affidavit attacks this court for not faulting the trial tribunal's chairperson. I think the points are a misconception because, as stated above, the appeal was dismissed at a preliminary stage without going to the merit. This alone renders the raised issues (i) and (ii) insignificant for leave.

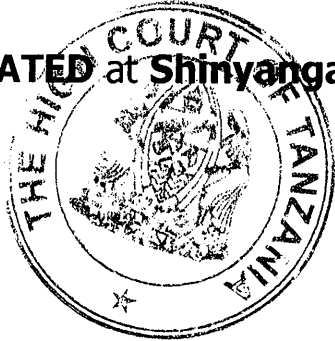
Items (iii) and (iv) of paragraph 3 of the applicant's affidavit, however, relate to this Court's findings that appeals against both decisions were time-barred without considering that the decision rejecting an application for setting aside the default judgment was filed within time. Read together, the two points raise one legal point of sufficiency importance for the Court of Appeal's determinations that;

Whether it was right for the presiding judge to dismiss Land Appeal No. 67 of 2016 for being time-barred irrespective of the fact that the appeal against the ruling in Misc. Land

*Application No. 70 of 2016 was lodged on 25.08.2016 after
the delivery of the ruling on 19.08.2016*

Consequently, the applicant's application is allowed to the extent explained above. No order as to costs.

DATED at **Shinyanga** this **15th** day of **July** 2022.




E. Y MKWIZU
JUDGE
15/07/2022