

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

AT SHINYANGA

MISC. LAND APPLICATION NO. 16 OF 2021

*(Arising from the judgement of this Court in Land Appeal No 12 of 2020
dated 9/10/2020)*

**MANYANDA MAIGE@ MANYAMBO MAIGE.....APPLICANT
VERSUS**

PATRICK NALIMI.....RESPONDENT

RULING

Date: 24/06/2022

MKWIZU, J:

Applicant in this matter filed an application for extension of time within which to file a notice of appeal to the Court of Appeal against the decision of this Court in Land appeal No. 12 of 2020. The application is predicated under section 14 (1) of the Law of Limitation Act (Cap 89 R.E 2002) supported by the applicant's own affidavit sworn on 3rd December 2020. The application was hotly opposed by the respondent, first in his counter affidavit and through a notice of objection filed in court on 18/5/2021 on the following points:

- i. The applicant's application has been against a wrong respondent who was not a party in land appeal no 12/2020*
- ii. The application is untenable for wrong citation*

The preliminary objections were argued by written submissions. In elaboration, the respondent contended that the names of the parties in the application are different from the names of the parties in the impugned decision.

Regarding the second point of objection, respondent argued that section 14(1) of the Law of Limitation Act cited by the Applicant in his application is not applicable on the matter, the proper law would have been section 11 (1) and section 5 (1) (c) of the Appellate Jurisdiction Act, (Cap 141 RE 2019). And that this Court is not a proper court to determine the application but the Court of Appeal of Tanzania.

The appellant submissions are a concession to the second preliminary objection in respect of the wrong citation. He categorically stated that the proper provisions to be cited were sections 11(1) and 5 (1) (c) of the appellate jurisdiction Act. He however invited the Court under the principles of overriding objectives to disregard the error as it is a minor error. He on this point relied on the decision of **One Tobacco Tanzania Limited & Another V Mwajuma Hamisi(The administratix of the estate of PHILLEMONI R KILENYI) and Another**, Civil Application No. 803 of 2018.

Regarding the 1st point of objection the applicant was of the view that the application is preferred against the proper respondent who was a party to the impugned decision.

I have heard the parties' submissions for and against the preliminary objections. Undeniably, the application is untenable before this Court for wrong citation of an enabling provisions of the law. This application is purposely for extension of time to appeal to the Court of Appeal against a land matter originating from the DLHT. Section 47 (2) of the Land disputes Court Act, (Cap 216 R.E 2019) prescribes the manner and that subsection 4 of the same section is specific on the procedure on which the appeal should be processed. The subsection reads:

"47(4) The procedure for appeal to the Court of Appeal under this section shall be governed by the Court of Appeal Rules."

This process is initiated by notice of appeal under Rule 83 (1) of the Tanzania Court of Appeal Rules and in case of any delay, his Court or the Court of Appeal under section 11 (1) of the Appellate Jurisdiction Act, (Cap 141 R.E. 2002) and Rule 45 of the Court of Appeal Rules 2009, can extend time to file the intended notice. Section 11 (1) of the Appellate jurisdiction Act reads:

*"11.-(1) Subject to subsection (2), the **High Court** or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, **may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired.**"*

And under Rule 45A read together with rule 47 of the Court of Appeal Rules this application is to be filed first to the High first and then to the Court of Appeal in a second bite. This disproves the argument that this court lacks jurisdiction raised by the applicant.

The applicant in this court has preferred his application under section 14 (1) of the law of Limitation Act which is not the appropriate provision as he himself admitted in his submissions. The position of the law is now settled that where there is wrong citation, the application is incompetent, and the remedy is to strike it out. This position was held in the case **Theotino Itanisa and Another V Pantaleo Kasabira @Pantaleo Sylvester Rwiza**, Civil Application No. 11 of 2015, (unreported), where it was observed: -

"This Court has said number of times that wrong citation of enabling Provision of Law or non-citation renders an application incompetent." [emphasis added]

The applicant is inviting the court to ignore the error, insert the correct provisions of the law and proceed to determining the matter on merit. The invitation was nailed on the overriding principle imploring the courts to concentrate on substantial justice rather than dwelling on procedural matters. I have keenly considered this suggestion. It is not convincing because, as hinted above, he cited a totally wrong enabling provisions of the law. The omission in citing the proper provision of the rule relating to the prayers made in support of the application is not in my view a technical issue worth ignoring. It should be stressed here that; the court is not functional unless properly moved to do what a party wishes the court to

do on the matter. This is normally done by citing to the court an enabling provision of the law. These provisions are missing in this application. In **Mbezi Fresh Market Limited and two others V. International Commercial Bank (Tanzania)**, Misc. Commercial Application No. 93 of 2020 (unreported) this court held:

"At this Juncture, I think it is worth pointing out that despite the advent of the principle of overriding objective, the position of Law as far as the Legal requirement to move the court properly is concerned is still the same, that is, the parties to a case have to move the court properly by citing proper provisions of the law... "

And deliberating on the importance of the rules of procedure, the Court of Appeal in **China Henan International Cooperation Group V. Salvand K.A Rwegasira**, Civil Reference No. 22 of 2005(unreported) held:

"... the role of rules of procedure in administration of justice is fundamental as stated by Collins M.R. in Re Coles and Ravenshear (1907) 1 KB.1 rules of procedure are intended to be that of hands maids rather than mistresses. That is, their function is to facilitate the administration of justice. Here, the omission in citing the proper provision of the rule relating to a reference and worst still the error in citing a wrong and inapplicable rule in support of the application is not in our view, a technicality falling within the scope and purview of Article 107A (2) (e) of the constitution it is a matter which goes to the very root of the matter as argued .."

Guided by the above cited authorities, I am of the view that this application is incompetent liable to be struck out. The second preliminary objection is sustained. Since the conclusion on this preliminary objection puts the application to an end, I find no need to deal with the first preliminary objection. The application is struck out with costs to the Respondent. Order accordingly.

DATED at **SHINYANGA** this 24th day of June 2022.




E.Y. MKWIZU
JUDGE
24/6/2022