

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOKA DISTRICT REGISTRY

AT BUKOKA

MISC. LAND APPLICATION NO. 52 OF 2022

(Arising from Misc. Land Application No. 58 of 2021 in the High Court of the United Republic of Tanzania at Bukoba and Land Application No. 14 of 2020 of the District Land and Housing Tribunal for Kagera at Bukoba)

JAFFARI MWANGI KAMUKULU.....APPLICATION

VERSUS

INNOCENT THADEO.....1ST RESPONDENT

CATHBERT SIMON.....2ND RESPONDENT

RULING

22/07/2022 & 06/09/2022
E. L. NGIGWANA, J.

In the instant application, the applicant, Jaffari Mwangi Kamukulu is seeking to enlarge the extended time; that is to say, beyond 21 days ordered by this court in Misc. Land Application No. 58 of 2021, any other order the court may deem fit and just to grant and for provision of costs.

The application was brought by way of chamber summons made under section 41 (2) of the Land Disputes Courts Act, Cap. 216 R: E 2019, and supported by an affidavit sworn by the applicant's advocate Mr. Victor Blasio.

Having been served with the chamber summons, the 2nd respondent, through the legal services of Mr. Lameck Erasto, learned counsel, filed a counter affidavit accompanied by a notice of preliminary objection on the competence of the application. The point of the objection reads thus;

"That, the Hon. Court is not properly moved to act upon the filed application regarding the order granted on 28/02/2022".

The Preliminary objection (P.O) was supported by the 1st respondent through his advocate Mr. Dickson Ngowi. At the hearing of this PO, the 2nd respondent was represented by Mr. Lameck Erasto, learned counsel while Mr. Ngowi, learned advocate, appeared for the 1st respondent and Mr. Victor Blasio, learned advocate appeared for the applicant.

Submitting in support of the PO, Mr. Lameck stated that, initially, the applicant moved the court under section 41 (2) of the Land Disputes courts Act, Cap. 216 R: E 2019 seeking for extension of time to appeal out of time against the decision of the District Land and Housing Tribunal for Kagera at Bukoba in Land Application No. 14 of 2014. He added that, the application ended in the applicant's favour whereas, he was granted 21 days within which to lodge an appeal out of time, but no appeal was filed within the extended time, therefore, the applicant cannot move the court under the same provision to wit; section 41 (2) of the Land Disputes Courts Act, Cap. 216 R: E 2019.

He further submitted that, wrong citation of the law renders an application incompetent. The learned counsel referred the court to the case of **Iddie Mwinyi versus NBC and Another** [2001] TLR 83 where it was held that wrong citation of the law renders the application incompetent and non-citation of the law is worse and equally renders an application incompetent.

He also made reference to the case of **Joseph William Aziine versus Saitore**, Misc. Land Application No. 11 of 2019 where this court (HC – Bukoba) found that wrong citation cannot be cured by the Overriding

Objective Principle. According to him, the applicant ought to have cited section 93 of the Civil Procedure Code Cap 33 R.E 2019 as enabling provision.

Mr. Dickson Ngowi, learned advocate for the 1st respondent supported submission made by Mr. Lameck Erasto and made reference to the case of **Letshego Bank (T) Ltd versus James Simon Kitajo and Another**, Misc. Civil Application No. 12 of 2020 and **Vehicle and Equipment Leasubg (Tanzania) Ltd versus Jeremiah Charles Nyagawa**, Civil Review No. 9 of 2021 to emphasize that wrong citation or failure to cite a specific provision of the law is fatal, and the anomaly renders the application incompetent.

Opposing the P.O, Mr. Blasio admitted that the applicant was granted 21 days within which to file an appeal out of time and that, the same was not filed as per court order. Mr. Blasio added that the court was properly moved under section 41 (2) of the Land Disputes Courts Act, Cap. 216 R: E 2019 because section 93 of the Civil Procedure Code Cap. 33 R: E 2019 is specific for prayers which have been made under the Civil Procedure Code, and not otherwise. Mr. Blasio made reference to the case **Joas Kamugisha versus The Registered Trustees of Bukoba Catholic Diocese**, Misc. Land Application No. 85 of 2019 where the court was moved under the same section to wit; section 41 (2) of the Land Disputes Courts Act Cap. 216 R: E 2019 to enlarge time beyond 14 days ordered by the court to re-file an application for extension of time.

In his rejoinder, Mr. Lameck Erasto stated that in the case of **Joas Kamugisha versus The Registered Trustees of Bukoba Catholic**

Diocese (supra), there was no objection raised therefore; the same is distinguishable to the circumstances of this case.

I have considered the application, the arguments of both sides and the law. Paragraph 8 of the affidavit supporting the application reads;

"That, on 28th day of February, 2022 the applicant was granted a leave to appeal within 21 days via application No. 58 of 2021 before the High Court of Tanzania at Bukoba".

The issue for determination is whether an application for enlargement of extended time can be brought under section 42 (1) of the Land Disputes Courts Act, Cap. 216 R: E 2019, the provision of law under which the initial application for extension of time was brought.

Section 41(2) of the Land disputes courts Act, Cap. 216 R: E 2019 provides that;

"An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order,

*"Provided that the High court may, for good cause, **extend the time for filing an appeal either before or after the expiration of such period of forty five days.**"*

Reading the herein above provision of the law, it is apparent that the same is specific for extension of time before and after expiration of appeal time to wit; 45 days after the date of the decision or order of the District Land and Housing Tribunal.

As far as I know, the Land Disputes Courts Act Cap. 216 R:E 2019 which is the applicable law in land matters does not provide for powers to enlarge

time fixed by the court. The same position was maintained in the case of **Zebrone Muhumha versus Sybegele Ayubu**, Misc. Land Application No. 182 of 2021 HLD – DSM (unreported).

According to Mr. Lameck Erasto learned advocate for the 2nd respondent and Mr. Dickson Ngowi, learned advocate for the 1st respondent, the proper enabling provision which ought to have been cited by the applicant is section 93 of the Civil Procedure Code Ca. 33.

With due respect to learned advocates, the hereinabove section is also not applicable under the circumstances of this case. Section 93 of the CPC provides that;

"Where any period is fixed or granted by the court for doing of any act prescribed or allowed by this code; that court may in its discretion, from time to time, enlarge such time, even though the period originally fixed or granted may have expired."

In the case of **Steven Ngoloka (As legal representative of Charles Ngoloka) versus Ponsian Nkwama**, Misc. Land Application No. 8 of 2019, My Senior learned Brother, Utamwa, J stressed that, for the court to exercise jurisdiction in an application made under section 93 of the Civil Procedure Code Cap. 33 R: E 2019, the following four conditions must be met cumulatively and not alternatively:-

- (i) A court of law might have previously fixed or granted time/period to the applicant for doing of an act at issue :-*
- (ii) The applicant must have failed to comply with the directive/order of the court mentioned above.*

(iii) The said period/time for doing an act at issue must be prescribed or allowed by the Civil Procedure Code, Cap. 33.

(iv) In exercising its jurisdiction under those provisions of law, the court does so discretionary.

In other words, section 93 of the CPC is limited to orders granted under the Code itself and not orders granted under other laws. See also **Zebrone Muhumha versus Sybegele Ayubu**, (supra). Indeed, I subscribe to this position, and for that reason, in our case, item (iii) herein above was not met owing to the reason that the order for the extension was made under the Land Disputes Courts Act and not in the Civil Procedure Code.

Another issue is whether the omission is curable. This court is alive of the Principle of Overriding Principle which was introduced in our law vide the Written Laws (Miscellaneous Amendments) Act No. 8 of 2018 to facilitate the just, expeditious, proportionate and affordable resolution of disputes without due regard to technicalities as opposed to substantive justice, but the principle does not help a party to circumvent the mandatory rules of the court. See the case **Martin Kumalija & 117 others versus Iron and Steel Ltd**, Civil Application No. 70/18 of 2018 CAT (Unreported).

The same Court in the recent case of **Juma Busiya versus Zonal Manager, South Tanzania Postal Corporation**, Civil Case No. 273 of 2020 (Unreported) had this to say;

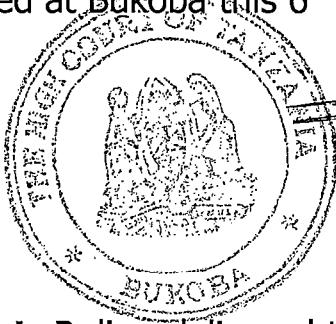
"The principle of overriding objective is not the ancient Greek goddess of universal remedy called panacea, such that its objective is to fix every kind of defects and omissions by parties in courts."

Therefore, with the advent of the Overriding Objective Principle, wrong citation or non-citation of the enabling provision is curable depending on the circumstances of each case. Something to note is that, the principle cannot be blindly invoked especially in situations where the non-compliance goes to the root of the matter. Even the learned counsel for the applicant did ask this court to invoke Overriding Objective Principle, and this suggest that he was aware that the same could not be applied under the circumstances of this case.

The applicant in the instant application has lodged an application under a wrong law. If there was only wrong citation of the provision of the law, the court would have allowed the defect to be corrected. Since the defect found in the instant application is on wrong citation of the law all together and not a wrong citation of the provision of the law, I subscribe to the submission made by the learned counsel for the 2nd respondent that non-citation of the relevant law is a fatal omission that renders the application incompetent. See the decisions of this court in **Allience Tobacco Tanzania Ltd and Another versus Mwajuma Hamis**, Misc. Civil Application No. 803 of 2018, **Antipas Romani Tairo versus Sikudhani Jafari**, Misc. Land Application No. 351 of 2020, **Augustino Elias Sokono@ Ubwabwa Ubwabwa and Two Others versus Bilala Seleman**, Land Appeal No. 252 of 2020 and **Veronica Hassan Kishai versus Suzan Salum Malangai and Two Others**, Misc. Land Application No. 351 of 2021. (All unreported)

For the reasons stated, the objection raised is sustained. Consequently, this application is hereby struck out for being incompetent. Given the nature of the matter, I make no order as to costs.

Dated at Bukoba this 6th day of September, 2022.

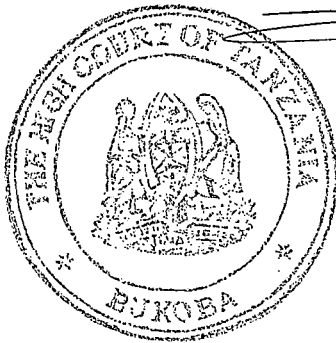


E. L. NGIGWANA

JUDGE

06/09/2022

Court: Ruling delivered this 6th day of September, 2022 in the presence of the 2nd respondent in person, Hon. E. M. Kamaleki, Judges' Law Assistant, Ms. Tumaini Hamidu, B/C but in the absence of the applicant and the 1st respondent.



E. L. NGIGWANA

JUDGE

06/09/2022