

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA.**

**(IN THE DISTRICT REGISTRY)**

**AT MWANZA**

**MISC. CIVIL APPLICATION NO. 57 OF 2022**

**JULIUS PHILBERT SHADRACK.....APPLICANT**

**VERSUS**

**THE BOARD OF PAMBA**

**SECONDARY SCHOOL.....1<sup>st</sup> RESPONDENT**

**THE PERMANENT SECRETARY**

**OF MINISTRY OF EDUCATION.....2<sup>nd</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....3<sup>rd</sup> RESPONDENT**

**RULING**

Last Order date: 20/09/2022

Ruling Date: 29/09/2022

**M. MNYUKWA, J.**

Through a chamber summons accompanied by an affidavit, the applicant herein moved this court under Rule 11 (1) of the Appellate Jurisdiction Act, Cap 141 R.E 2019 and any other enabling provisions of the law seeking the following orders;

1. *That the honourable court be pleased to grant application for extension of time within which to apply for leave to lodge an appeal out of time.*
2. *Costs of the application.*



3. *Any other relief this honourable court may deem fit to grant.*

The application was accompanied by an affidavit sworn in by Julius Philibert Shadrack who is the applicant.

Responding to the applicant's affidavit, the respondents filed their joint counter affidavit which was accompanied with the notice of preliminary objection which contain one point of objection as reproduced hereunder:

- (i) *That this application is unmaintainable as the court lacks jurisdiction to entertain the same.*

As per the practice of the court, the preliminary objection is supposed to be argued first, before the hearing of the substantive application. During the hearing of the preliminary objection, the applicant appeared in person, unrepresented while Ms. Subira Mwandambo, Senior State Attorney, appeared for the respondents. The preliminary objection was argued orally.

Ms. Subira was the first to submit. In her submission, she argued that, the basis of this preliminary objection is on the Applicant's Application, who prays for this court to extend time to file appeal out of time. She referred paragraph 6 of the applicant's affidavit which prays this court to rectify the irregularity of the decision of the Court of Appeal dated 12/5/2022 which was annexed.



She avers that, this court has no jurisdiction to rectify the decision of the Court of Appeal, as the applicant was supposed to ask for review to the same court. That, since this court has no jurisdiction, she prays this application to be dismissed with costs. She cited the case of **Isaya Linus Chengula (As Administrator of the Estate of the late Linus Chengula) vs Frank Nyika (As the Administrator of the Estate of the Late Ashery Nyika)**, Civil Application No. 487/13 of 2020, and submitted that, the Court of Appeal on page 15 as it stated that, the issue of jurisdiction is fundamental as it goes to the very root of the matter.

She went on that, the issue of jurisdiction can be raised at any stage of the proceedings and can be raised even in the stage of review. She finalised her submission by insisting that, the applicant's application seeks to rectify the decision of the Court of Appeal, and therefore this court has no jurisdiction and she prayed for the application to be dismissed with costs.

Responding, the applicant opposed the preliminary objection and he submitted that, he is a layman and he prays this court to hear his application. That, he doesn't know if this court has no jurisdiction and he prayed the preliminary objection to be dismissed.

In her rejoinder, Ms. Subira attacked the applicant's assertion that he is a lay person, and she averred that, ignorance of the law is not a



defence as it was stated in the case of **Vedastus Raphael vs Mwanza City Council and 2 Others**, Civil Application No. 594/08 of 2021. She specifically pointed out at page 13-14, where the Court of Appeal stated that, ignorance of law is not a sufficient reason or good cause for extension of time. She went on that, in our case at hand the applicant asserts that he is not aware if this court has no jurisdiction for the reason that, he is a layman which is not a defence, She therefore prays the matter to be dismissed with costs.

After going through the applicant's application, affidavit, counter affidavit, point of preliminary objection and the parties' submission herein, the question for determination is whether, the preliminary objection raised by the respondents stands.

The main argument by the respondents is that, this court lacks jurisdiction to entertain the applicant's application. Ms. Subira referred to paragraph 6 of the applicant's affidavit in which the applicant has set out the grounds for his application, to be the irregularities that are in Court of Appeal decision that has to be addressed if this application is to be granted. She avers that, this court has no jurisdiction to rectify the irregularities of the Court of Appeal unless the applicant would have preferred review before the Court of Appeal.



I agree with the respondents' counsel that, jurisdiction is a creature of statute and not what the parties to the case, like or dislike. It is the statute which confers the power to a court, to hear and determine the matter before it. That, parties cannot confer jurisdiction to the court which it doesn't have. This principle has been stated in a plethora of court decisions such as the case of **Sospeter Kahindi vs Mbeshi Mashini**, Civil Appeal No. 56 of 2017, which quoted with authority the case of **Shyam Thanki and Others vs New Palace Hotel** [1971] 1 EA 199 at 202, where the Court of Appeal at Dar es Salaam stated that;

*"All the courts in Tanzania are created by statute and their jurisdiction is purely statutory. It is an elementary principle of law that parties cannot by consent give a court jurisdiction which it does not possess"*

The same position was maintained in other Court of Appeal decisions such are, **Amina Karim Jetha vs Wakf and Trust Property Commission (As Administrator of the Estate of the late ALI SALIM ALI)**, Civil Appeal No. 86 of 2019 and **Ms. Safia Ahmed Okash (As Administratrix of the Estate of the Late AHMED OKASH) vs MS. Sikudhani Amir & 82 Others**, Civil Appeal No. 138 of 2016.

The issue of jurisdiction being so fundamental can be raised at any stage of the case. That is to say at any stage, anything that has been done by the court with no jurisdiction will be a nullity. And therefore,



jurisdiction of the court has to be a key element to be established before a court can entertain a matter before it.

The applicant herein has lodged this application seeking for grant of extension of time for which to apply for leave to lodge an appeal out of time. However, the applicant's affidavit as it is depicted under paragraph 6 which averred that,

*" That, there is irregularities in the decision of the Court of Appeal that are to be addressed if this application will be granted".*

As argued by Ms. Subira, this court has no jurisdiction to rectify the irregularities of the Court of Appeal. Bearing in mind that, the court's decisions have to adhere to the principle of hierarchy in which the decisions of the Court of Appeal cannot by anyway overturned by the lower court. Taking into consideration that, Court of Appeal being a superior Court, this court has no jurisdiction to entertain the matter that has already been decided by it. I therefore join hands with the respondents' counsel that, the proper remedy for the applicant is to correct the irregularity in the decision of the Court of Appeal by way of review and not by this application.




Therefore, as this court lacks jurisdiction, and as we have seen above that, anything that is done by a court with no jurisdiction to entertain the matter will be declared a nullity, to save this court the embarrassment of determining the matter in which its decision will end up being a nullity, the matter has to be struck out.

In fine, the preliminary objection is hereby sustained and the application is hereby struck out for want of jurisdiction, the applicant is at liberty to file a proper application supported by a proper affidavit. No order as to costs.

Order accordingly.



  
**M.MNYUKWA**  
**JUDGE**  
**29/09/2022**

**Court:** Ruling delivered on 29/09/2022 in presence of the applicant and in absence of the respondents.

  
**M.MNYUKWA**  
**JUDGE**  
**29/09/2022**