

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DISTRICT REGISTRY
AT TABORA

MISCELLANEOUS LAND APPLICATION NO. 47 OF 2021

*(Arising from the decision of the High Court of Tanzania at Tabora in
Land Appeal No. 8 of 2015)*

MARY MAXIMILLIAN KELVIN -----APPLICANT

VERSUS

MAJALIWA DAUD MAYAYA -----RESPONDENT

RULING

Date: 12/07/2022 & 02/09/2022

BAHATI SALEMA, J.:

The applicant herein named Mary Maximillian Kelvin moved this Court by way of Chamber Summons seeking an extension of time for applying for leave to appeal to the Court of Appeal against the decision of this Court in Land Appeal No. 8/2015 and subsequent to that she prays for leave to appeal to the Court of Appeal.

Before the case could come for hearing, the respondent Majaliwa Daud Mayaya under the service of Mr. Kamaliza Kayaga learned counsel, lodged a notice of preliminary objection on two points to wit: -

- 1. That a similar application was filed by the applicant before the High Court of Tanzania at Shinyanga vide Misc.*

Land Case Application No. 37 of 2016 and was dismissed on 26/11/2018 by Kibella, J.

2. That, the application is an abuse of the judicial process.

During the hearing, the applicant was represented by senior counsel Mr. Masendeka Ndayanse whereas the respondent enjoyed the service Mr. Kamaliza Kayaga senior counsel.

Submitting in support of the Preliminary Objection, Mr. Kayaga stated that the applicant herein had filed a similar application which is Misc Land Case Application No. 37 of 2016 at the High Court Shinyanga Registry applying for the extension of time so that she could appeal against the decision of Mruma J, in Land Appeal No. 8 of 2014.

Further, the applicant has moved this court praying the Court to grant the same orders she sought in Misc. Land Case Application No. 37 of 2016. Mr. Kayaga contended that the current suit is res-judicata as there is no reason for filing a fresh application, he termed it as an abuse of the judicial process.

Responding, Mr. Ndayanse submitted that, after being dissatisfied with the decision of this Court in Misc. Land Case Application No. 8 of 2015 the applicant instituted an application in the High Court, Shinyanga Registry seeking an extension of time and leave to appeal to the Court of Appeal of Tanzania but the same was dismissed by Kibella, J.

He stated further that, the applicant went for a second bite in the Court of Appeal but before the application could be heard she withdrew the notice on 03/11/2021 upon discovering that she still had a right to institute this application.

On the allegations of abuse of the court process, Mr. Ndayanse stated that there is no abuse of the court process because all the procedures they have been following are guided by the Court of Appeal Rules. He prayed the preliminary objection to be dismissed with costs.

In a short rejoinder, Mr. Kayaga stated that if the applicant is conceding that the decision of Kibella J is still intact, it is too difficult for this Court to give another judgment. He prayed this application to be dismissed with costs.

Having dispassionately gone through the record and submissions made by the learned counsels, in his submission against the preliminary objection Mr. Ndayanse agrees that the applicant filed a similar application in the High Court, Shinyanga registry but he contends that the same was dismissed for being filed in a wrong registry that is why the like application in Tabora registry.

Upon close examination of the ruling in Misc. Land Application No. 37 of 2016 I came to an understanding that Mr. Ndayanse's statement that the former application in Shinyanga Registry was dismissed for being filed in the wrong registry is untrue because the order that dismissed the application is different from what he has

told this Court. On page 9 of the ruling delivered by Kibella, J on 26/11/2016 it reads: -

"I am at one with Mr. Kayaga that, from 26/7/2016 up to 6/10/2016 almost three months had passed. However, for not being fair, telling the truth as when the applicant got a copy of the order by Makani, J, that it was as rightly mentioned by Mr. Kayaga, I find that the applicant for the whole period of time together with her advocate failed to accord for the period of time together with her advocate failed to accord for the period of delay and that the delay was inordinate where no diligence was showed in prosecuting the matter except there was negligence."

From the outset, I agree with Mr. Kayaga that, this application is res-judicata as it falls in the meaning ascribed under section 9 of the Civil Procedure Code, Cap 33 [R.E 2019]. I thus sustain the objection as raised and proceed to dismiss the application with costs.

Order accordingly.



A. BAHATI SALEMA

JUDGE

02/09/2022



Date: 02/09/2022

Coram: Hon. G.P. Ngaeje, Ag DR

Applicants: Advocate Amos Gahise holding brief for advocate
Ndayanse

Respondent: Advocate Kamaliza Kayaga.

B/C Omari Mkongo, RMA

Mr. Kayaga: The matter comes for ruling and we are ready for it.

Court: Ruling delivered this 02/09/2022 in presence of Mr. Kamaliza Kayaga for the Respondent and Mr. Amos Gahise holding brief for Mr. Ndayanse learned, counsel for the applicant.



G.P. NGAEJE
Ag. DEPUTY REGISTRAR
02/09/2022

Court: Right of appeal fully explained.



G.P. NGAEJE
Ag. DEPUTY REGISTRAR
02/09/2022

