

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)
AT ARUSHA**

MISC. LAND APPLICATION NO.108 OF 2021

*(C/f High Court of Tanzania at Arusha Misc. Land Case Appeal No. 6 of 2019 arising from
Application No. 38 of 2013 of the District Land and Housing Tribunal for Arusha at
Arusha)*

AMANDI MATEI1ST APPLICANT

ABDULMARIK MUHAWIYA

(As a Guardian of Farhiya Abdul Marik Muhawiya.....2nd APPLICANT

VERSUS

**ZAINABU MAULID JUMBE (The Administratrix of the estate of the late
Romana P. Salekio.....RESPONDENT**

RULING

01/09/2022 & 18/10/2022

GWAE, J

Apparently, the applicants, Amandi Matei and Abdulmarik Muhawiya (as a guardian of Farhiya Abdul Marik Muhawiya) have jointly filed this application for leave to appeal to the Court of Appeal of Tanzania under section 47 (1) (2) (3) of the Land Disputes Courts Act, Cap 216, Revised Edition, 2002 as amended by section 9 of the Written Laws Miscellaneous Amendment Act No. 3 of 2018 (Act).

The spirit of the intended appeal to the Court of Appeal of Tanzania by the applicants is to challenge concurrent decisions of this court delivered on the 12th day of November 2021 and that of the District Land and Housing Tribunal for Arusha at Arusha (trial tribunal). As revealed by the court's records, this application was physically on the 15th day of December 2021.

This application has been supported and resisted through the applicants' joint affidavit and respondent's counter affidavit respectively and it was ordered to be disposed of by way of written submission

Basing on Rule 45 (a) of the Tanzania Court of Appeal Rules, 2009, the respondent when filed his reply to the applicant's written submission has raised a preliminary objection that, this application has been preferred out of the prescribed period of thirty (30) days. He argued that, this court has no jurisdiction to entertain this application since the same is barred by the Law of Limitation. He urged this court to make a reference to the case of **Said Mohamed Said vs. Tango Transport Company Ltd**, Civil Appeal No. 84 of 2009 (unreported-CAT) where it was stated that, that jurisdiction is the first issue that the court should first ask itself before acting on any matter placed before it for determination.

Through his rejoinder submission, the applicants stated that their application was duly presented for electronically filing since 10th December 2021, thus it was filed before expiration of thirty (30) days. They then appended a copy of Statistical Dashboard Electronic case registration system and cited Rule 21 (1) of Judicature and Application of Laws (Electronic Filing) Rules, GN. No. 148 of 2018 and this court's decision **(Mwipopo, J)** in **Mohamed Hashil vs. National Microfinance Bank Ltd (NMB)**, Labour Revision No. 106 of 2020 (unreported) where it was held;

".....Filing of the document electronically is recognized by our laws as one of the means of filing of a document in court. The document which has been filed through electronic filing system is considered to be filed in court on the date it was filed. It is the practice that after the document is lodged online the party has to file the hard copy too".

I have diligently followed the parties' submission for and against the preliminary objection, it is clear that, if the hard copy presented for filing in court was to be considered, this application would be time barred as it would be deemed to have contravened Rules 45 (a) of the Court of Appeal Rules, 2009 which requires an application for leave to be filed within the period of thirty (30) days from the date of judgment or order against it is

desired to appeal. The Rules 45 (a) as amended by Rule 6 of GN. No. 362 of 2017 is reproduced herein under;

R. 45 In civil matters: -

- (a) *Notwithstanding the provisions of rule 46 (1), where an appeal lies with the leave of the High Court, application for leave may be made informally, when the decision against which it is desired to appeal is given, or by chamber summons according to the practice of the High Court, **within thirty days of the decision**; or*
- (b) *Where an appeal lies with the leave of the Court, application for leave shall be made in the manner prescribed in rules 6 Amendment of rule 44 Amendment of rule 45 "Application for leave to appeal in civil matters in manners prescribed in Rules 49 and 50 and within fourteen days of the decision against which it is desired to appeal or, where the application for leave to appeal has been made to the High Court and refused, within fourteen days of that refusal;*

Provided that in computing the time within which to lodge an application for leave in the Court under paragraph (b), there shall be excluded such time as may be certified by the Registrar of the High Court as having been required for preparation of a copy of the decision subject to the provisions of rule 49 (3) (emphasis supplied)".

As of now with modern way of filing documents in courts including applications of this nature whereby parties are required to electronically file their cases together with their relevant documents and then physically present their respective hard copies to the courts. That being the case, I have therefore to traverse on the Electronic Filing, Rules (supra) especially Rule 21 (1) cited by the applicants which is relevant to this preliminary objection, Rule 21 (1) is thus reproduced for the sake of clarity;

*"21(1) A document shall **be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the date it is submitted**, unless a specific time is set by the court or it is rejected.*

(2) A document submitted at or after midnight or on a Saturday, Sunday, or public holiday shall, unless it is rejected by the court, be considered filed the next working day".

Being guided by the Rule 21 (1) of the Rules, 2018, I find that the rule denotes that a document submitted for filing in court shall be deemed to have been duly filed on the day it is submitted for its admission. In our application the applicants have appended the copy of JSDS/eCase Registration which exhibits that this application was presented for admission since 10th December 2020, thus, the period of thirty days had not elapsed as the judgment and decree intended to be appealed was

delivered on 12th Day of November 2021. The respondent's PO is therefore overruled.

Turning back to the determination of the applicants' application, the issue to be ascertained is, whether the intended appeal is arguable by the Court of Appeal of Tanzania. The applicants through their joint affidavit have just stated that they are serious contestable matters of law and facts which stand good chances of success. I am alive of the principle of the law that, in application for leave to appeal to the Court of Appeal the Applicant must exhibit that there are points of law worthy for determination by the Court of Appeal as was correctly stressed in the case of **Simon Kabaka Daniel vs. Mwita Marwa Nyang' and 11 others** (1989) TLR 64 where it was stated that;

"In application for leave to appeal to the Court of Appeal the application must demonstrate that there is a point of law involved for the attention of the Court of Appeal....."

However, through the applicants' joint written submission, there is demonstration that, the trial tribunal and appellate court judge had failed to consider the strong documentary evidence adduced during trial and that, since the appellate court found the trial tribunal chairperson to have lacked jurisdiction to declare the certificate of title in the name of the 2nd


applicant has no legal effect. According to the applicants, it was equally not proper for the appellate judge to declare the respondent lawful owner of the suit property.

Considering the arguments by the parties in particular on the issue of rectification of the title of the disputed land and alleged failure to consider evidence adduced by the applicant during trial of the dispute. I am therefore of the firm view that, this application is grantable for the above reasons.

Consequently, the applicants' application for leave is granted. Costs of this application shall abide the intended appeal. It is so ordered.

DATED at ARUSHA this 18th day of October, 2022




M.R. GWAE
JUDGE