

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TANGA DISTRICT REGISTRY

AT TANGA

MISC. LAND APPLICATION NO. 38 OF 2022

(Arising from Land Appeal No. 11 of 2022 of the Resident Magistrate's Court of Tanga (Extended Jurisdiction), also arising from Land Appeal No. 12 of 2021 of the District Land and Housing Tribunal for Korogwe at Korogwe, originating from Land Application No. 2 of 2021 of Chekelei Ward Tribunal in Korogwe District)

CHAUSIKU BAZILO.....APPLICANT

-VERSUS-

MWANAIIDI SAID.....RESPONDENT

RULING

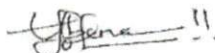
Date of last order: 12/09/2022

Date of ruling: 27/10/2022

AGATHO, J.:

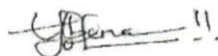
The applicant applied for extension of time to apply for leave to appeal to the Court of Appeal of Tanzania (herein cited as CAT). He also abridged his application with application for leave to appeal to the CAT. The application a brought by way of chamber summons supported by an affidavit. The application was contested as the respondent filed her counter affidavit.

It is crucial to state that for one to appeal to the CAT requires leave. Moreover, the applicant is bound to show there is or there are arguable issues to be tried by the CAT.



Considering the evidence (affidavits) and the ruling of the High Court, in my view the claim that the Applicant filed his appeal on time which was adjudged to be time barred is without merit as indeed the appeal was filed out of time. This is elaborated hereinbelow. Following the PO raised by the Respondent's counsel that the appeal was filed out of times, the High Court to rule whether that was true.

The time for application of certification on point of law so as to appeal to the CAT is 60 days as per the case of **Omari Rwechungura Kakweke v Evarist Magoti, Misc. Land Application No.1 of 2022, HCT**. I agree with the Respondent that this application is an abuse of court process. Looking at the applicant's application for certification on point of law, the same was filed after expiration of 12 days after the expiry of 30 days, that means it was filed after 42 days elapsed but that does not constitute delay because the days for filing certificate on point of law has not been provided for. The resort therefore is the Law of Limitations Act [Cap 89 R.E. 2019]. Where item 21 of part iii of the schedule provides that application under the Civil Procedure Code, the Magistrates' Court Act, or other written law for which no period of limitation is provided for in the said law [Cap 89 R.E. 2019] or any other written law then time of limitation will be sixty days. See **Omari Rwechungura Kakweke's case**

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(supra). In the present application the same seem to have been filed prematurely. The time for applying for certification of point of law has not expired. The judgment of the Resident Magistrate's Court (Extended jurisdiction) in Land Appeal No. 11 of 2022 was delivered on 14/06/2022 the application at hand was filed on 29/07/2022. Apparently, the application for certification on point of law was not out time. The application ought to be struck out.

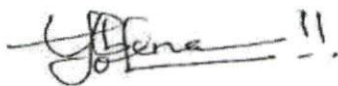
The applicant is also trying to ride two horses at the same time. He has applied for leave to appeal to the CAT but abridged the same with application for certification on point of law. In **Mathew Mlay v Rashid Majid Kaseng, Civil Application No. 354/17 of 2020 CAT** holding that the application for certification on point of law cannot be abridged with application for leave to appeal to the CAT. Therefore, the present application deserves to be struck out.

Moreover, the question of the Respondent being declared a lawful owner as opposed to being a licensee is a question of fact or evidence. It is not a pure point of law that warrants certification as being a point of law. See the case of **Paulo Joseph v Peter John, Misc. Civil Application No. 63 of 2020 HCT** (unreported). Thus, the certification on point of law is rejected for lacking merit.

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For the going reason the application is misconceived, and above all it lacks merit. Consequently, it is dismissed with costs.

DATED at **TANGA** this 27th Day of October 2022.

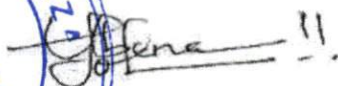


U. J. AGATHO

JUDGE

27/10/2022

Court: the ruling will be delivered on this 27th day of October 2022 by Hon. Beda Nyaki, DR in the presence of the parties.



U. J. AGATHO

JUDGE

27/10/2022



Date: 27/10/2022

Coram: Hon. B. R. Nyaki, DR

Applicant: Ms. Graciana Assenga, Advocate

Respondent: Present in person

C/C: Zayumba

Court: Ruling delivered this 27th day of October, 2022 in the presence of Ms. Graciana Assenga, Advocate for the Applicant and the Respondent in person.



B. R. Nyaki

DEPUTY REGISTRAR

27/10/2022

Court: Right of Appeal explained.



B. R. Nyaki

DEPUTY REGISTRAR

27/10/2022