

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(MOROGORO DISTRICT REGISTRY)
AT MOROGORO

MISC. LAND APPLICATION NO. 40 OF 2022

(Arising from Land Application No. 32 of 2014, together with Land Appeal No. 273 of 2020 and Misc. Land Application No. 536 of 2021)

RAJABU MYINGA APPLICANT

VERSUS

HARUNA MLONGELA..... RESPONDENT

RULING

Last Court order on: 25/10/2022

Ruling date on: 28/10/2022

NGWEMBE, J:

This is an application for extension of time to appeal against the judgement and decree of the District Land and Housing Tribunal for Kilosa in Land application No. 32 of 2014. However, the respondent upon receipt of that application, filed both counter affidavit as well as Notice of Preliminary Object. The essence of preliminary objection is to protect the integrity of this court from being abused by the applicant in two areas: -

- i. The judgement and decree of the trial District Tribunal was appealed against to this court as Land appeal No. 273 of 2020 but same was dismissed by this Court – Land Division for want of prosecution.
- ii. The restoration of the dismissed appeal in Misc. Land Application No. 536 of 2021 was equally dismissed on merits by this court Land Division – Dar es Salaam.

On the hearing of this objection, both parties successfully procured legal services of learned advocates. While the applicant was represented by Hashim Mziray learned counsel, the respondent had the legal services of advocate Joseph Kipeche. Submitting in support to the objections, Mr. Joseph insisted that this application for extension of time is intended to abuse the court process because, this court has already determined this matter finally and conclusively. The decision of this court in Misc. Application No. 536 of 2021 for restoration of Land Appeal No. 273 of 2020 was dismissed on merits hence appealable to the Court of Appeal under section 5 (1) (c) of the Appellate Jurisdiction Act. Coming to this court with the present application is equal to an abuse of the court process.

Stood firm to ask this court to dismiss the application with costs.

In reply, advocate Mziray challenged the objection as lacking merits because section 41 (2) of the Land Disputes Court Act does not prohibit applications of this nature. Contradicted that section 5 (1) (c) of the Appellate Jurisdiction Act is not applicable, rather Order 39 Rule 19 of Civil Procedure Code allows the application for extension of time. Rested by insisting that, this objection lacks merits same be dismissed.

Having summarized the arguments of learned advocates, this court would like briefly to discuss on which circumstances may amount into an abuse of court process. Thereafter, I will discuss on whether this application fall within the circumstances of abuse of court process.


The term abuse process entails abuse of legal process; malicious abuse of process or malicious abuse of legal process, or wrongful process or wrongful process of law, all means the improper and tortious use of a legitimately issued court process to obtain a result that is either unlawful or beyond the process's scope. One who uses a legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it is not designed is subject to liability to the other for harm caused by the abuse of process.

On this matter I am not travelling in a virgin land, both this court and the Court of Appeal have exhausted by providing reliable precedents. To cite just a few. My brother judge Ismail in **Commercial case No. 117 of 2015 between JV Tangerm Construction Co. Ltd & Another Vs. Tanzania Ports Authority and the Attorney General**, took time to discuss in tails on this matter follows: -

"The law is settled in this respect. It is to the effect that, courts are enjoined to ensure that they protect themselves from any possible abuse of its powers or procedures in the conduct of proceedings. They must, as a matter of implicit obligation, guard against actions of unscrupulous parties who turn the courts into a theatre for endless, repetitive and frivolous litigations, and actions

*which are known as an abuse of court process (See: **Zephrenus Clement Marushwa v. The Attorney General & 4 Others, HC-Land Application No. 241 of 2018** (MZA-unreported). To appreciate the import of this principle it is apposite that the definition of the term and the scope of its application be shared. The act of using the legal process - during a legal proceeding - to harass another party to the suit, to intentionally incur Costs with the intent that the other party will be ordered to pay those costs, or to delay the court action." A more broadened definition of the term is gathered from Black's Law Dictionary, (6th ed), Continental Edition 1981-1991 p. 990 at 10-11 which defines an abuse as: "everything which is contrary to good order established by usage that is a complete departure from reasonable use.... An abuse is done when one makes an excessive or improper use of a thing or to employ such thing in a manner contrary to the natural legal rules for its use."*

Likewise, the Court of Appeal in the case of **Hamis Said Mkuki Vs. Fatuma Ally, Civil Appeal No. 147 of 2017** (unreported) at page 33, held that, the law does not allow riding two horses at the same time because it amounts to an abuse of court process. A similar stance was also expressed in the case of **Harrison Mandali & Others v. The Registered Trustees of the Archdiocese of Dar es Salaam, Civil Application No. 482/17 of 2017** (unreported).




From the discussion above, I find abuse of legal process arises when a person, while knowing that he has no claim of right over the subject matter

or when a party being assured that the court has no jurisdiction, yet tries to insist and forcefully, confer jurisdiction to the court.

In respect to this application for extension of time, the applicant is seeking leave of this court for extension of time to appeal against the judgement and decree of the trial District Land Tribunal, while knowing clearly that such right was already exhausted but denied. The respondent has rightly narrated eloquently, on the appeals strived by the appellant.

Expressly, the judgement of the trial tribunal was appealed against to this court timeously, same was instituted in this court at Dar es Salaam Land Registry as Land Appeal No. 273 of 2020, but unfortunate the appeal was dismissed for inaction of the appellant/applicant, that is, due to laxity of the applicant. Being dissatisfied, the applicant herein rightly but unsuccessfully tried to set aside the dismissal order, by instituting Misc. Land Application No. 536 of 2021, however, after determining the application on merits same was dismissed forthwith.

Advocate for the respondent was equally right that, since the applicant is represented by a learned advocate, the learned advocate for the applicant, deliberately decided to abuse this court by instituting this application for extension of time, while knowing the decision of this court in Misc. Land Application No. 536 of 2021 is appealable as of right to whoever aggrieved.



Perusing the records of this application and the previous records, I am satisfied, the applicant together with his advocate have decided to abuse the jurisdiction of this court. An advocate fully conversant with law, cannot

dare to come back to this court, while knowing the same matter was conclusively decided.

In essence, once a decision is made by a competent court, unless it is reversed by a superior court, either on appeal or revision, otherwise that decision remains alive and kicking forever. Since the dismissal order was not successfully challenged by the disputants, such order remains, unless decided otherwise.

Without labouring much on this matter, I fully subscribe to the arguments of learned advocate for the respondent that this application is a none other than abuse to the court process. As such I proceed to uphold the preliminary objection and struck out this application for extension of time with costs payable to the respondent.

I accordingly Order.

Dated at Morogoro in chambers this 28th October, 2022



A handwritten signature in blue ink, appearing to read "P. J. Ngwembe", is written over a horizontal line.

P. J. NGWEMBE

JUDGE

28/10/2022

Court: Judgment delivered at Morogoro in Chambers on this 28th day of October, 2022, **Before Hon. J.B. Manyama, AG/DR** in the presence of the Applicant person and in the presence of the Respondent person.

Right to appeal to the Court of Appeal explained.

SGD. HON. J.B. MANYAMA

AG/DEPUTY REGISTRAR

28/10/2022

I Certify that this is a true and correct
copy of the original



Deputy Registrar

Date 28/10/2022 at Morogoro