

**“ORIGINAL”**

**IN THE HIGH COURT OF THE UNITED REPUBLIC TANZANIA  
TANGA DISTRICT REGISTRY  
AT TANGA**

**MISC. LAND APPLICATION NO. 44 OF 2022**

(Arising out of Land Application No. 69 of 2020, High Court Tanga dated 22<sup>nd</sup> July 2021)

**MUSA BILALI JAMBIA----- APPLICANT**

***VERSUS***

**THE REGISTERED TRUSTEES OF NORTHERN  
EAST DIOCESE OF ELCT-----RESPONDENT**

**RULING**

**Date of Ruling- 11/11/2022  
Mansoor, J:**

The applicant herein has applied for Review of the order of the High Court passed in Misc. Land Application No. 69 of 2020, which granted the Applicant herein leave to appeal to the Court of Appeal. The Applicant contends that since the appeal was determined by the Resident Magistrate (with extended Jurisdiction), then the application for leave ought to have been determined by a Resident Magistrate with extended Jurisdiction, and so the High Court Judge made an error apparent on the record to determine and grant leave to appeal

to the Court of Appeal on an impugned decision of the Resident Magistrate with Extended Jurisdiction. The applicant made the application under section 78 (1) (2) and Order XLII (1) and (2) of the Civil Procedure Code, Cap 33 R: E 2002.

Order 42 Rule 3 of the Civil Procedure Code prescribes as follows:

3. *The provisions as to the form of preferring appeal shall apply, mutatis mutandis, to applications for review.*

Thus, the applicant filed a Memorandum of Review setting out precisely in the Memorandum of Review the grounds upon which the High Court had made an apparent error on the record for which it could be reviewed.

Again, the Memorandum of Review ought to have been filed within 30 days from the date of the Judgment, and this is provided under Part III item 3 of the Schedule to the Law of Limitation Act, which provides:

3. *.For an application under the Civil Procedure Code for a review of a decree, judgment, or order ..... Thirty days*

The Applicant was granted an extension to file the application for Review outside the prescribed period. It be noted that this present application was not resisted by the respondent as the Counsel for the respondent shares the same view that there was an error apparent on the records of the High Court, and that an application for leave ought to have been entertained and determined by the Resident Magistrate with Extended Jurisdiction.

The power of the High Court under Order 42, Rule 1, of the Civil Procedure Code is limited and narrow and the same cannot be equated in their ambit and scope to an appeal or rehearing. In review proceedings under Order 42, Rule 1, of the Civil Procedure Code, the court should not act as court of appeal and re-appreciate the entire case. According to the provisions contained in Order 42, Rule 1, of the Civil

Procedure Code, a person aggrieved by a decree or order and who, from the discovery of new and important matter or evidence which, after exercise of due diligence, was not within his knowledge could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, may seek for review of the decree or order passed against him. As stated earlier, the application was preferred against the laid down procedures prescribed under Order XLII Rule 3 of the Civil Procedure Code, Cap 33 R: E 2002.

The application for leave was made under Section 11 (1) of the Appellate Jurisdiction Act, Cap 141 and according to the provision, the Court which have the jurisdiction to grant leave to appeal is the Resident Magistrate Court with extended jurisdiction and not the High Court of Tanzania. At the same time section 47 (2) of the Land Disputes Courts Act, Cap 216 R.E 2019 provides that whoever is aggrieved by the decision of the High Court in the exercise of its revisional or appellate



jurisdiction may, with the leave of the High Court or Court of Appeal, appeal to the Court of Appeal. For clarity I shall reproduce hereunder the provisions of Section 11 (1) of the Appellate Jurisdiction Act, which.

Section 11(1) "Subject to subsection (2), the High Court or where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate Court concerned....."

The applicant is aggrieved by the decision of Hon. Mwajombe, Resident Magistrate with Extended Jurisdiction in Land Appeal No. 3 of 2020 at the Resident Magistrate Court of Tanga. From the provision of Section 11 (1) of the Appellate Jurisdiction Act, the application for leave ought to have been entertained by the Resident Magistrate Court exercising extended powers which heard the appeal. In the case of **Lukelo Uhahula vs. Republic, Criminal Appeal**

**No. 333 of 2016, CAT Mbeya** (unreported), the Court found the application incompetent for being filed to the High Court instead of the Resident Magistrates court with extended jurisdiction which heard the matter. The Court of Appeal held that;”

*.....in the case at hand, as the appeal was heard and determined by the Resident Magistrate with Extended Jurisdiction, the appellant ought to have filed his application for extension of time to file the notice of appeal before the Resident Magistrate's Court exercising extended jurisdiction not the High Court".*

The applicant wrongly filed the application before the High Court, he ought to have made an application before the Resident Magistrate Court of Tanga and not this Court. I would have made an order to strike out the Application No. 69 of 2020 because it was filed at the wrong registry but would not do so since the application is already wrongly determined and granted by this Court.

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Since the application was filed before the High Court, the application was entertained by the Judge. Not only that the Judge made an error to entertain an application for which he did not have the jurisdiction, but also the Applicant made an error for filing the application before the High Court instead of filing it before the Resident Magistrate Court.

For these reasons, the application for Review is accepted. The Ruling issued by Honourable Judge F. Mtulya on 22<sup>nd</sup> July 2021 in Land Application No. 69 of 2020 is hereby Reviewed. This Application No. 69 of 2020 shall be returned to the Resident Magistrate Court with extended jurisdiction to be determined by the Resident Magistrate with Extended Jurisdiction.

Each party shall bear his/her own costs.

**DATED AND DELIVERED at TANGA this 11<sup>TH</sup> day of November, 2022**



  
**L. MANSOOR**

**JUDGE**

**11<sup>TH</sup> NOVEMBER 2022**