

IN THE HIGH COURT OF UNITED REPUBLIC TANZANIA

DISTRICT REGISTRY OF MOROGORO

AT MOROGORO

MISC.LAND APPLICATION NO. 24 OF 2022

**(Originating from Land Appeal No. 97 of 2020, High Court (Land Division)
Dar es salaam)**

MUSA PIUS LIAMKA.....1ST APPLICANT

ALLY SAID MGUNG'UNDE.....2ND APPLICANT

MOHAMED SAID MGUNG'UNDE.....3RD APPLICANT

MWANAID SHOMARY MOHAMEDI.....4TH APPLICANT

VERSUS

CONSOLATA LUKASI MAUMBA.....RESPONDENT

RULING

Date of Last Order: 16.11.2022

Date of Ruling: 29.11.2022

MALATA, J

This ruling is in respect to application for extension of time to file notice of appeal to Court of Appeal. The applicants preferred the application under section 14(1) of The Law of Limitation Act, Cap 89 R.E 2019 supported by the Affidavit sworn by the first applicant.

In response thereto the respondent filed counter affidavit with notice of preliminary objection. The preliminary objection is to the effect that;

1. The application is unattainable for being preferred hopelessly 30 days period of time as ordered by his Lordship, Hon. S.M

Kalunde, J in Misc. Land Application No. 4 of 2022 on the 22nd day of March, 2022,

2. The application is incompetent and abuse of court process for contravening the order of this Honourable court dated 22nd March 2022 as per **Hon. S.M Kalunde, J**
3. The applicants' affidavit is incurably defective hence the application is incompetent in law.

During hearing of the Preliminary Objection, the applicants appeared in person without legal representation while the respondent enjoyed the legal services of Ms. Levina Mtwewe, learned counsel.

Submitting in support of preliminary objection, the respondent counsel, Ms. Levina argued jointly the first and second points of objection and withdrew the third. Ms Levina submitted that the applicants are in contravention of this Court's Order by Hon, Kalunde J dated 22/03/2022 which required the applicants to refile a proper application within thirty (30) days.

Ms. Levina further submitted that, the applicants filed the application with the same errors, as the order was to the effect that all the applicants have to swear/affirm and sign the affidavit. The present application has been supported by the affidavit sworn by the first applicant but signed by all applicants, in contravention with the said Order. To cement his submission, Ms Levina cited the case of **Ayubu Salehe Chamshana & Eshe Hamisi vs. Diamond Trust Tanzania Ltd and others**, Misc. Land Application no 514 of 2020 (unreported) page 4, last paragraph

"It is trite law in our jurisdiction that, court orders are to be complied with parties without failure."

Ms. Levina, further submitted that failure to abide to the order of the court is an abuse of court process, which render the whole application incompetent. Finally, Ms. Levina prayed for dismissal of the application with costs.

This court suo motto directed the learned counsel to address on the cited enabling provision of the Law following the fact that the applicants cited section 14(1) of the Law Limitation Act, while the time within which to refile application was granted by Court. At the same time, they stated that they are applying for extension of time to file notice to court of appeal out time.

The learned counsel submitted that, the enabling law to the application is section 14 of the Law of Limitation Act, Cap 89, R.E 2019 and the application before this court is in respect of application for extension of time to file notice of appeal to the Court of Appeal, as such submitted that the cited law is not proper law as the applicants were required to cite the provision of Appellate Jurisdiction Act, Cap 141, R.E 2019 thus the application is incompetent as it has been brought under wrong Law.

In reply to the submission by the learned counsel, the applicants admitted that they did not comply with the court order by **Hon. Kalunde J.**

Additionally, the applicants submitted that, they have nothing to submit on citing a non-applicable law since they are not lawyers.

In rejoinder learned counsel had nothing to submit save for stressing for costs.

Having gone submission and court records the issues for determination is *whether the preliminary objection is meritorious.*

At the outset, it should be noted that while this application arises from an order of this Court dated 22nd March 2022 in Misc. Land Application no. 514 of 2020 where the application was struck out and the applicants ordered to refile another application within 30 days.

Upon perusal of this application for extension of time, the record shows that the previous application was struck out for having a defective affidavit.

It is with no iota of doubt that, the applicants did not comply with this Court's order by **Hon. Kalunde J**, dated 22/03/2022 which required them to refile application within thirty (30) days, as; *first*, failed to file application within time, *second*, application was sworn/affirmed by one applicant instead of all applicants but signed by all applicants, *three*, application is seeking extension of time to file notice of appeal to the court of appeal but brought under the Law of Limitation Act instead of Appellate Jurisdiction Act to be. The applicants unequivocally conceded that they are in contravention with this court's order.

Legally, application was to be brought under section 93 of the Civil Procedure Code which provides;

"Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Code, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired."

In that regard, it goes without saying therefore that, the applicants have once again missed the boat by filing application in contravention of this

Court's order and failure to cite the applicable law to the application section 93 of the Civil Procedure Code.

Looking at the aftermath of the application, this court was be guided by various court decisions to search for effect thereof. In the case **Puma Energy Tanzania Limited v. Ruby Roadways (T) Limited**, Civil Application No. 3 of 2018, **Nakolomwa Matepeli Shila Vs. Mwanahamisi Ally Nongwa**, Civil Application no. 21 of 2016, Court of Appeal had this to say;

"The Court being mindful that the applicant was once granted leave to file supplementary record of appeal it struck out the application for being incompetent."

In the case **Hussein Mgonja Vs. The Trustees of Tanzania Episcopal Conference**, Civil Revision no.02 of 2022 CA (unreported), the Court of Appeal when striking out an application on the ground of citing the wrong enabling provision stated that;

"If a party cites a wrong provision of the law, the matter becomes incompetent as the court will not have been properly moved."

The same position is echoed in the cases of **Paskali Arusha Vs. Mosses Mollel**, Civil Revision no. 13 of 2014, Court of Appeal (unreported), **Daudi Lengiyau Vs. Dr. David E. Shungu**, Civil Application no 28 of 2015, Court of Appeal (unreported), **Wilfred John Vs. Paulo Kazungu**, Misc. civil Application no. 152 of 2019, High Court of Tanzania.

It is my settled opinion therefore that, based on the afore stated principles, the application at hand is incompetent for the reasons that,

one, applicants' failure to abide to this court's order dated 22/03/2022, *two*, citing non applicable law to the application, *three*, applicants' failure to swear/affirm and sign affidavit in accordance with law. As the application is incompetent this means that there is no application in the eyes of the law.

In the premises, our hands are guided and tied by the law, based on the afore stated legal principles, this court, therefore, hold that, the applicants' application is incompetent. Eventually, the preliminary objections are hereby sustained and the application is accordingly struck out with costs.

It is so ordered.

DATED at **MOROGORO** this 29th November, 2022.




G.P. MALATA

JUDGE

29/11/2022