

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(DODOMA DISTRICT REGISTRY)
AT DODOMA**

MISC. LAND APPLICATION NO. 63 OF 2020

(Originating from Revision No. 05 of 2021 of the High Court of Dodoma and Land Application No. 110 of 2010 of the District Land and Housing Tribunal for Dodoma)

SADALLAH IBRAHIM SADALLAH suing as Administrator
of estates of HAMIS SHABAN MALONGO.....**APPLICANT**

VERSUS

MPWAPWA DISTRICT COUNCIL.....**RESPONDENT**

RULING

19/05/2022 & 21/07/2022

KAGOMBA, J.

Following the application for leave to appeal to the Court of Appeal of Tanzania filed by SADALLAH IBRAHIM SADALLAH suing as Administrator of the estate of the late HAMIS SHABAN MALONGO ("the applicant"), the respondent herein, MPWAPWA DISTRICT COUNCIL, filed a notice of Preliminary objection on point of law, thus;

1. The application is time barred.
2. The applicant has no *locus standi* to institute this matter.

This Court ordered hearing of the preliminary objection to proceed by way of written submissions as was prayed by Ms. Jenipher Kaaya, Senior State Attorney for the respondent, after receiving no objection from Advocate Njulumu for the applicant. Both parties complied with the scheduling order of the Court.

Mr. Camilius Ruhinda, for the respondent, filed respondent's submissions in support of the preliminary objection. Before submitting on the points of law raised, he referred the Court to the case of **Ali Shabani and 48 Others V. Tanzania National Road Agency (TANROADS) and Another**, Civil Appeal No. 261 of 2020, CAT, (unreported) at page 8 where the Court of Appeal stated that:

".....we hold the view that no preliminary objection will be taken from abstract without reference to some facts plain on the pleadings which must be looked at without reference examination of any other evidence."

In respect to the 1st point of objection, Mr. Ruhinda submitted that the applicant had filed his application for leave to appeal to the Court of Appeal out of time. He stated that subject to Rule 45(a) of the Court of Appeal Rules, 2009 this kind of applications are to be made within 30 days of the decision. He elaborated that the impugned decision was made on 04/8/2020 and therefore the applicant was required to make his application on or before 04/9/2020. He added that, by filing it on 16/9/2020, the application was rendered hopelessly time barred.

Basing on the above submission, Mr. Ruhinda prayed the Court to dismiss the application as per S. 3(1) of the Law of Limitation Act, [Cap 89 R.E 2019] read together with the case of **Ali Shabani** (Supra).

On the 2nd point of objection, Mr. Ruhinda submitted that the applicant's had no *locus standi* to institute this application. He contended that the applicant pleaded to be the administrator of the estate of the late HAMISI SHABAN MALONGO but no evidence was enclosed in the application

to prove such fact. He added that absence of a letter of administration in line with a court's order permitting him to sue on behalf of the deceased the applicant's status in the application was questionable. He cited the case of **Lujuna Subi Balonzi V. Registered Trustees of CCM** (1986) T. L. R 203.

In the light of the above submission, Mr. Ruhinda prayed the court to dismiss the application with costs.

Mr. Samweli Mcharo, learned advocate for the applicant, filed reply to the respondent's submission. He urged the court to dismiss the preliminary objection because the application was filed within time and the applicant has *locus standi* to prosecute the same.

With regard to the 1st point of objection, he submitted that the application was filed on 3/9/2020 through electronic filing system and having been admitted on 4/9/2020 Court fees were paid through receipt No. 27658435, hence the application was filed within 30 days as provided for under the Court of Appeal Rules, 2009.

Mr. Mcharo argued that, the date when documents were admitted electronically, is the date of filing. To this end, he referred to rule 21(1) of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 G.N 148 of 2018; thus

"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.”

On the 2nd point of preliminary objection Mr. Mcharo replied that the applicant was suing as the Administrator of the estate of the late HAMIS SHABAN MALONGO. He stated that the letter of administration was presented to the Court on 23/4/2021 and the Court ordered amendment of the application to incorporate the name of the applicant. For this reasoning, he prayed the Court to overrule the preliminary objection with costs.

On rejoinder, Ms. Jenipher Kaaya opposed the contention that the application was filed electronically. She argued that the provision of Electronic Filing Rules would therefore not apply. She argued however that even if the application was filed electronically as contended by the advocate for the applicant, he should have filed the electronic submission form to indicate the details of the application at the time of filing as per rule 10(4) of the Electronic Filing Rules. She added that the application, by its looking was not electronically converted to PDF.

Ms. Kaaya further rejoined that the applicant, after realizing that the application was admitted on a different date, he had the avenue of approaching the Registrar to clear such anomalies of admission date in terms of rule 24(5) & (6) of the Electronic Filing Rules, which he did not pursue.

It was Ms. Kaaya's further rejoinder that the existence of the electronic filing system was not a bar to other modes of filing as per rule 20 of Electronic Filing Rules. It was her views that the applicant used a tactic of

paying court fee earlier before the actual filing as he filed 12 days after the payment.

On other hand, Ms. Kaaya contended that even if the contention by the applicant that he filed the application electronically were to succeed, still the application was filed out of time as there was a lapse of 31 days. She cited the case of **Tanzania Fish Processors Limited V. Eusto K. Ntagalinda**, Civil Application No. 41/08 of 2018, CAT, Mwanza, (Unreported), at page 10 of typed judgment where the Court of Appeal with approval, quoted the case of **Hassan Bushiri V. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) where it was held that;

"Delay of even a single day, has to be accounted for otherwise would be no point of having rules prescribing periods within which certain steps have to be taken"

On the above basis, Ms. Kaaya maintained the prayer that the applicant's application be dismissed with costs.

From the above submissions by the both parties the issue to be determined, first, is the question of time limitation as it touches the jurisdiction of this Court. It was submitted by the applicant's advocate that his application was filed within time through electronic filing. In this case, guidance has to be sought from with the Judicature and Application of Laws (Electronic Filing) Rules, 2018, G.N. No. 148 of 2018 ("Electronic Filing Rules") which provide for electronic filing of documents in court. Rule 8 of the Electronic Filing Rules provides

"8. All pleadings, petitions, applications, appeals and such other documents shall be filed electronically in accordance with these Rules".

Under Rule 21(1) of the said Rules, the time and date under which filing shall be deemed to be effected is provided for as follows;

"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 specific time is set by the Court or it is rejected".

However, it has been a practice that after the document is filed online, a party has to file the hard copy too in court.

As correctly submitted by Mr. Ruhinda, It is the requirement of the law under rule 45(a) of the Court of Appeal Rules, that any party who desires to challenge a decision of this court by way of an appeal has to lodge an application for leave to appeal to the Court of Appeal within 30 days of the decision. Records shows that the ruling which the applicant intends to challenge was delivered on 4/8/2020. Counting days subject to rule 8(a) of the Court of Appeal Rules, the application for leave to appeal to the Court of Appeal was to be lodged not later than 3/9/2020.

Coming to the application at hand, Mr. Mcharo contended that the applicant filed his application electronically on 3/9/2020. This contention however was unsupported. It is trite law that whoever desires the Court to decide in his favour on existence of a fact he assert to exist, he has to prove its existence. (See S. 110(1) of the Evidence Act, [Cap 6 R.E 2022]).

Therefore, it was the duty of the applicant to prove to the court, on the face of record, that he filed the application electronically on 3/9/2020.

The Court in satisfying itself, conducted an inquiry, which found out that on 3/9/2022 the system had only one application of this kind and the same wasn't the applicant's application. For that reason, the fact that the applicant filed his application electronically on 3/9/2020 lacks limb to stand on. However, the system shows that this application was filed on 16/9/2020 and admitted on 17/9/2020 as appearing in the filed chamber application.

Mr. Mcharo, on other hand argued that after the admission of the application, on 4/09/2020 the applicant paid Court fee through receipt No. 27658435. This contention also was counter checked against the court's system of payment. Desperately the court couldn't find the alleged payment on 4/09/2020. A further confirmation through POS and PORTAL system (Collection Centre Collection) with the control number indicated on the receipt, the same showed the list of bills charged and paid on 4/09/2020 but there was no bill for applicant's application.

That being the case the applicant's contention that he filed his application on 3/9/2020 and paid Court fee on 4/9/2021 is unsubstantiated. For that reason, Mr. Ruhinda's contention that the application was filed on 16/9/2020 and hence it was time barred triumph.

Thus, it is my finding that the application for leave to appeal to the Court of Appeal was filed out of prescribed time, hence time barred. Therefore, the 1st point of the preliminary objection has merit and is

accordingly sustained. With this finding it is inconsequential to determine the 2nd point of objection.

In the upshot, the application is dismissed for being filed out of time as per the provision of section 3(1) of the Law of Limitation Act, [Cap 89 R.E 2019]. No order as to costs.

Dated at Dodoma this 21st Day of July, 2022.



A handwritten signature in blue ink, appearing to read "Abdi S. Kagomba".

ABDI S. KAGOMBA

JUDGE