

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

LAND APPLICATION NO 62 OF 2022

(Arising from Land Appeal No. 10 of 2022 of the Resident Magistrates Court of Tanga (extended jurisdiction) and arising from Land Appeal No. 53 of 2019 of the District Land and Housing Tribunal of Tanga at as originating from Civil Land Dispute No. S.048 of 2019 of Maweni Ward)

GEORGE P. KIBIRITI-----APPLICANT

VERSUS

YAHAYA ALLY MAFITA-----RESPONDENT

RULING

MANYANDA, J

This is an application for extension of time within which the Applicant can apply for leave to appeal to the Court of Appeal against a decision in Land Appeal No. 10 of 2022 by Hon. M.I. Sabuni, Senior Resident Magistrate with Extended Jurisdiction, dated 11/08/2022.

The application is supported by an affidavit sworn by the Applicant George P. Kibiriti. It is countered by a counter affidavit affirmed by Yahaya Ally Mafita, the Respondent.

When the application came for hearing, the Applicant was represented by Glasiana Asenga, learned Advocate and Henry Njowoka, learned Advocate represented the Respondent.

When the learned Advocates argued their positions for and against the application, this court invited them to address it on the propriety or otherwise of the application bearing in mind that the impugned decision was made by a Senior Resident Magistrate with extended jurisdiction.

The two learned counsel conceded on the position of the law that since the case was transferred from the Registry of this court to the Registry of a court of the Resident Magistrate with Extended Jurisdiction which made the decision, then, it is a requirement of the law that application concerning the decision, though is required to be filed in this court, the same is to be transferred to the Court of the Resident Magistrate with Extended Jurisdiction.

They cited the provisions of section 3A(1) and (2) and 3B(1)(a) and (c) of the Appellate Jurisdiction Act, [Cap.141 R.E. 2019] which require this court to ensure timely expedition disposal of cases. Moreover, they cited the case of **Kessy Raymond**

Kimwaga Vs Bi Moshi Omari (as a Survivor of one Abas Said), Civil Application No. 121/03 of 2019 CAT – Dodoma (unreported).

I agree with the learned counsel on the position of the law in this case. The Court of Appeal of Tanzania stated clearly in **Kessy Raymond Kimwaga's case (supra)** that where a case filed in the High Court was transferred to a Court of the Resident Magistrate and decided by such court, it was held that the High Court ceases to have jurisdiction over it, including application for leave to appeal to the Court of Appeal. It stated at page 7 as follows:

"Besides, though the provisions of section 45(2) of the MCA envisages the transfer of an appeal whose decision is the subject of another appeal before this court, it is our considered opinion that the said transfer also involves an application for extension of time and leave to appeal to the court to be heard by the Resident Magistrate with Extended Jurisdiction sitting in the court of the Resident Magistrate".

Also the Appellate Jurisdiction Act in section 11(1) reads as follows:

"Subject to sub-section (2), the High Court or, where an appeal is from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intentions to appeal from judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired".

Moreover, recently, the Chief Justice has issued Rules governing the transfer of cases assigned to Magistrates with Extended Jurisdiction known as "the Judicature and Application of Laws (Transfer and Management of Cases Assigned to Magistrate with Extended Jurisdiction) Rules of 2023" GN No. 11 of 2023, published on 20/01/2023.

Rule 13(1) provide applications arising from matters transferred to a Magistrate with Extended Jurisdiction shall be filed in the High Court and the Judge In-charge will transfer the same to a Magistrate with Extended Jurisdiction for determination. .

Basing on the authorities I have cited above, it is clear that the application at hand was rightly filed in the High Court Registry, but it was supposed to be transferred to a Magistrate with Extended Jurisdiction for its determination.

Given the circumstance, I do hereby order that this file be placed before the Judge In-charge for his directions. No order as to costs.

Order accordingly.

Date at Tanga this 03rd day of February, 2023

