

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**MISC. LAND APPLICATION NO. 25 OF 2022**

(Arising from the decision of this Court in Land Appeal No. 61 of 2021, Mahimbali, J.)

**GRISELA KAPIS .....APPLICANT**

**VERUS**

**PETER WARYOBA .....RESPONDENT**

**RULING**

*10<sup>th</sup> & 17<sup>th</sup> March, 2022*

**M. L. KOMBA, J.**

Before this Court, the applicant has filed the present application seeking for the following orders;

- 1. That this Court be pleased to grant leave to applicant to appeal to the court of Appeal.*
- 2. Costs be provided for.*

The application was brought by way of chamber summons made under Rule 45 (a) and (b) of Court of Appeal Rules, GN 368 of 2009 as amended by GN 362 of 2017 and any other enabling provisions and it is accompanied by an affidavit deposed by the applicant. The respondent did file a counter affidavit

to contest the application and preliminary objection that the court was not properly moved by the applicant. It was ordered Preliminary Objection be heard by way of Written submission, respondent did not comply with court orders and the Preliminary Objection was dismissed and the matter was scheduled for hearing.

A brief fact giving rise to the present application can be summarized as follows; that the applicant filed an appeal before this court (Land Appeal No. 61 of 2021 Mahimbali, J) to challenge the decision of the District Land and Housing Tribunal for Tarime at Tarime (the DLHT) in Land Application No. 67 of 2019 which was decided in favour of the respondent. This court dismissed the appeal for it being devoid of merit.

When the matter fixed for hearing, applicant was represented by Ms. Hellena Mabula while the respondent was represented by Mr. Daudi Mahemba both advocates.

Submitting in support of her application, Ms. Hellena pray for adoption of affidavit of Grisela and submitted that the applicant was not satisfied by decision in Land Appeal No. 61 of 2021 and is equipped with four reasons that, first there is vivid evidence of biasness in presiding Chairman of the

trial tribunal and therefore the justice could not prevail. She submitted that, the appellate judge noted the attack to DW2 but proceed to decide what was decided. On the second reason submitted by the counsel was the evidence used to determine the matter was from the bench which was no subjected to cross examination and affect rights of the party who lost. It was her submission that at page 10 of the judgement there was issues raised by the Chairman of DLHT to facilitate hearing but there are other issues framed by Chairman. The other reason submitted is that the court leave some legal issues undetermined and the position of the appellate court to re-evaluate and determine undetermined issues. She prayed for the permission so that she can seek intervention by the higher court.

In protest for the application, Mr. Mahemba submitted that this application lacks important elements to be forwarded to the Court of Appeal. He said the counsel did not mention which paragraph show biasness over the presiding chairman and how that biasness affects the party. He said biasness is not a direct thing to allow the applicant to forward this issue to Court of Appeal of Tanzania. On the second reason, it was his submission that the Chairman make observation on what he saw while in the *locus in quo* and

there is no need for him to be cross examined as it was finding at the locus in quo.

Mr. Mahemba further submitted that on third and fourth reason that at page 7 of the typed proceedings there are three issues which raised concerning who is the owner, who invade the land and the reliefs there to. He said this issue was not raised during the first appeal but counsel submitted during hearing and the High Court Judge dealt with it. In a different note Mr. Mahemba submitted that this court is not properly moved on this application as it is filled under Court of Appeal Rules. He said the base of this application was land case/application No. 67 of 2019 at DLHT Tarime and later on Land Appeal No. 61 of 2021. If the current application intends to appeal against the decision of the Land Appeal No. 61 of 2021 therefore the proper provision is section 47 (2) of the Land Disputes Courts Act, Cap 216 R. E. 2019. He pray this application to be dismissed with costs.

When utilizing her right to rejoin the issues Ms. Hellena submitted that the issue of appropriateness of the law was raised in the PO and was rejected by court for want of prosecution she was wondering if counsel for the respondent submission was arguing PO or otherwise but all in all she said the court is properly moved. The issue of proving biasness she referred this

court to page 13 of the judgement which shows the action of Chairman attacking the witness that shows the chairman personalize issue to the witness. She insisted that issues which were raised at page 7 were not discussed and chairman did not answer those issues and other new issues were not cross examined by parties.

At the closure of submission being noted that there was none of the party raised the issue of time. In the course of studying file before hearing the court noticed that application was filed under rule 45 of the Court of Appeal Rules as amended. I wanted parties to address the court on the issue of time whether the application is properly before me.

Ms. Hellen informed the court that their application was filed on 02/05/2022 while decision which was subject to appeal was delivered on 30/03/2022 and that according to law they were supposed to file on or before 30/04/2022 that means their application is filled out of time. They prayed for this court to withdraw their application without costs.

Mr. Mahemba submitted that the application which is filled out of time the remedy is only one to dismiss. Because parties has already made submission

up to the date of submission he prayed the application to be dismissed with costs.

I find that I have to determine whether this application is properly before the court.

The origin of application is land dispute as indicated from the previous judgements from application No. 67 of 2019 at DLHT Tarime and Land Appeal No. 61 of 2021. Land Disputes Courts Act provide for appeal mechanism if party is not satisfied by the decision of the High Court. The section reads;

*47(2) A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may, with leave of the High Court or Court of Appeal, appeal to the Court of Appeal.*

While entertaining Land Appeal No. 61 of 2021 before Mahimbali, J. this court was exercising its appellate jurisdiction and therefore the proper channel for the applicant was supposed to be the one provided under the Land Disputes Courts Act as quoted above. Land issues are dealt with Land Disputes Courts Act which was enacted specifically to provide for establishment of Land dispute settlement machinery and for matters incidental thereto (refer recital of the Act). I agree with Mr. Mahemba that

the proper legislation to be applied was supposed to be the Land Disputes Courts Act.

However, the applicant insists that the court was properly moved, the enabling provision has time limitation as quoted hereunder;

*R. 45 In civil matters:- (a) notwithstanding the provisions of rule 46(1), where an appeal lies with the leave of the High Court, application for leave may be made informally, when the decision against which it is desired to appeal is given, or by chamber summons **according to the practice of the High Court, within thirty days of the decision;** or (b) where an appeal lies with the leave of the Court, application for leave shall be made in the manner prescribed in rules 49 and 50 **and within fourteen days of the decision against which it is desired to appeal** or, where the application for leave to appeal has been made to the High Court and refused, within fourteen days of that refusal;*

*Provided that in computing the time within which to lodge an application for leave in the Court under paragraph (b), there shall be excluded such time as may be certified by the Registrar of the High Court as having been required for preparation of a copy of the decision subject to the provisions of rule 49(3).*

Ms. Hellen the counsel for applicant submitted that their application was filed on 02/05/2022 while decision which was subject to appeal was delivered on 30/03/2022 and that according to law they were supposed to file on or




before 30/04/2022 and concluded that their application is filed out of time.

And that is the position of this court too.

Basing on applicant's submission, I find this application is filed out of time and according to section 3 of Law of limitation Act, [Cap 89 R. E. 2019] I hereby dismiss this application with costs.



  
**M. L. KOMBA**  
**JUDGE**  
**17<sup>th</sup> March, 2023**