

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

**MISC. LAND APPLICATION NO. 120 OF 2022**

*(C/F RM /Land Appeal No. 32 of 2019 Resident Magistrate's Court of Arusha at Arusha with Ext.  
Jurisdiction)*

**NANGOKO NASINDA ..... APPLICANT**

**VERSUS**

**SIMON LOIDIMANYI ..... RESPONDENT**

**JOSEPH LOIDIMANYI ..... RESPONDENT**

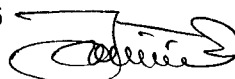
**RULING**

28<sup>th</sup> March & 28<sup>th</sup> April, 2023

**TIGANGA, J.**

The applicant is seeking for extension of time so that she can apply for leave to appeal as well as notice of appeal out of time to the Court of Appeal against the decision of Resident Magistrate's Court of Arusha at Arusha with Extended Jurisdiction in RM/Land Appeal No. 32 of 2019 delivered on 05<sup>th</sup> September 2019.

The application is by chamber summons made under section 11 (1) of the **Appellate Jurisdiction Act** (Cap 141 R.E. 2019 hereinafter, AJA) and is supported by the applicant's affidavit. According to her affidavit, she deposed that, she failed to file the Notice of Appeal as well as the application



for leave to Appeal to the Court of Appeal within time due to health problems which were facing together with her family.

The application was opposed by the respondents through the counter affidavit sworn and filed by Mr. Daudi Saimalie Lairumbe, Advocate for the respondents. Together with that counter affidavit, the counsel filed a notice of preliminary objection objecting to the application that, the present application is incompetent for being an omnibus.

During the hearing of the preliminary objection, the applicant was represented by Mr. Alpha Ng'ondya whereas the respondents were jointly represented by Mr. Daudi Saimalie Lairumbe both learned Advocates. Both parties argued the preliminary objection orally. While the counsel for the respondents supported the preliminary objection, the counsel for the applicant opposed it.

For reasons which will be made clear soon hereafter, I will not go into the details of the arguments made by the counsel for the parties. The reasons are that, when I was preparing the ruling over the preliminary objection, it came to my knowledge that, the decision sought to be appealed against was made by the Resident Magistrate in the capacity of extended

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jurisdiction. Now in terms of the authority in the case of **Bahati Ndunguru vs The Republic**, Crim. Appeal No. 519 of 2015, CAT (unreported) it was held that, when a case is transferred to the resident magistrate court to be heard by the Resident Magistrate with Extended Jurisdiction, nothing remains in the High Court. The court went on to hold that; where an appeal lies from a subordinate court, exercising extended powers, that subordinate court, and not the High Court, has powers to extend the time for giving not only the notice of appeal but also granting an application for leave to appeal as well as to certify whether it is a fit case to come to the Court of Appeal, therefore the applications for leave, certification of point of law, and extension of time to appeal, or file notice of appeal, are within the powers of the Resident Magistrates Court with extended jurisdiction. The High Court lacks jurisdiction to entertain such kind of consequential applications for cases already transferred to the resident Magistrate Courts with extended Jurisdiction.

In this application, the prayers sought are for an extension of time to apply for leave to appeal to the Court of Appeal of Tanzania, and the other one is an extension of time to file the Notice of Appeal out of time to the Court of Appeal against the decision of the Resident Magistrate's Court of

Arusha at Arusha with Extended Jurisdiction in RM/Land Appeal No. 32 of 2019. This was supposed not to be heard by the High Court but by the Court of Resident Magistrates with extended jurisdiction as held by the Court of Appeal in the case of **Lukelo Uhalula vs. The Republic**, Criminal Appeal No. 333 of 2016, CAT at Mbeya (unreported) that;

*"In the light of the stated position of the law, 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 Magistrates' Court exercising extended jurisdiction, not the High Court. In this regard, it was improper for the High Court to entertain the application for an extension to file the notice of appeal on a matter which was not in the High Court Registry following its transfer to the Resident Magistrate's Court. In the circumstances, the order by the High Court granting an extension of time is invalid because it has no powers to grant an extension of time in an appeal which had been entertained by a subordinate court in the exercise of its extended jurisdiction."*

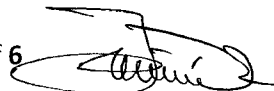
Therefore, from the foregoing, this court was supposed to transfer the application at hand to the Resident Magistrate with extended jurisdiction. That said, I find that this court erroneously proceeded to entertain the

application without jurisdiction, in the case of **Fanuel Mantiri Ng'unda vs Herman Mantiri Ng'unda & 2 others** [1995] TLR 155 CAT - it was held *inter alia* that;

*"The question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature. In our considered view the question of jurisdiction is so fundamental that the court must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial.*

*....The reason for this is that it is risky and unsafe for the court to proceed with the trial of the case on the assumption that the court has jurisdiction to adjudicate upon the case. For the court to proceed to try the case based on assuming jurisdiction has the obvious disadvantage that the trial may well end up in futility as null and void on grounds of lack of jurisdiction when it is proved later as a matter of evidence that the court was not properly vested with jurisdiction"*

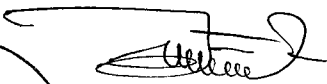

Now, that being the position of the law, and in the circumstances where the matter has not been heard on merits, it is safe in my view to disregard whatever was done by this court in this application and regard the same as if nothing was so done because whatever was done, was done in misdirection. That said, I order the Deputy Registrar of this court to

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commence the process of transferring the application as originally filed to the Resident Magistrate with extended jurisdiction.

It is accordingly ordered.

**DATED** and delivered at **ARUSHA** this 28<sup>th</sup> day of April 2023

  
  
**J.C. TIGANGA**  
**JUDGE**