IN THE HIGH COURT OF TANZANIA

DODOMA SUB-REGISTRY

AT DODOMA

MISC. LAND APPLICATION NO. 109 OF 2022

(Arising from the judgment of Land Appeal No. 31 of 2022 of the High Court of Tanzania at Dodoma, Original Land Application No. 36 of 2020 of the District Land and Housing Tribunal of Iramba at Kiomboi)

SHEBO SAI.....APPLICANT

VERSUS

JISANDU MAHONA

(As administrator of the estate

of the late Masaga Malago Geni) .....RESPONDENT

RULING

3rd April & 10th July, 2023

HASSAN, J:.

Before this court is an application for leave to appeal to the Court of Appeal of Tanzania. Obviously, it is a condition precedent that an application of this nature has to be certified by High Court, if indeed, there is a need to clout the door of the Court of Appeal. Legally, this become due only when there is a point of law involved in the matter, and which worth consideration by the Court of Appeal.

This application was brought under the chamber summons supported by an affidavit deposed by the one Shebo Sai (the applicant). In the chamber summons the applicant seek to move the court under the

provisions of section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 R. E 2019 and Rule 45 (a) of the Tanzania Court of Appeal Rules, 2009.

Before hearing commence, the respondent raised two grounds of preliminary objection to be determined by the court at the earliest as hereunder:

1. *That the application is hopelessly time barred.*
2. *That the affidavit filed by the applicant is incurably defective as the jurat of attestation has not been signed by the deponent.*

The preliminary objections were heard by way of written submissions and the parties have timely complied with a scheduling order. I am thankful for their commitment and efforts. Now, due to the reason which will be better known as I go along, I will deal with the first ground to the fullest.

On the first ground of preliminary objection, the respondent prayed to strike out this application for being filed out of time. He argued that, this application has been brought under section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 and Rule 45 (a) of the Tanzania Court of Appeal Rules, 2009. In the applicant's view, rule 45 (a) as amended by

Government Notice No. 36 of 2017 requires that an application of such nature should be brought within 30 days from the date of decision.

He submitted that, the decision of which this applicant is seeking a leave of the High Court was delivered on 20th day of September, 2022. The present application for leave was filed on 18/11/2022, beyond the prescribed period set out by the law. Counting the days, it is almost 60 days late, and without having pursued for extension of time. He added that, for this reason the application is incompetent and must be struck out.

In reply to the first ground of objection, the applicant briefly submitted that, the application was filed within time. The judgment was delivered on 20th day of September, 2022 and the copy of the said judgment was served to the applicant on 17th October, 2022, which is 28 days from the date of judgment. To cement his reasoning, he referred the court to the judiciary virtual filing system (***jsds.judiciary.go.tz***) to support his date of filing.

Within this system, it is shown that the Misc. Land Application No. 109 of 2022 with reference **No. 97722** was filed on 17th day of November, 2022 at **18: 18: 58** hours. Upon his believe, that was 30 days from the date of service of the copy of judgment. Thus, to his view, the application

for leave to appeal to the court of appeal was filed within the time prescribed by law. For that, he prayed that the first ground of preliminary objection should be overruled. To support his argument, he cited the provisions of section 4 and section 19 (1) (2) of the Law of Limitation Act, Cap. 89 R. E 2019.

I have wisely considered the parties' submissions for the first ground of preliminary objection, knowing that, if it sustains, it will disposed of the whole application. Hence, in this point, the issue for determination here is whether or not the application at hand was filed within a time stipulated by the law?

All along, it is not disputed that the judgment of this Court in the Land Appeal No. 31 of 2022 was delivered on 20th day of September, 2022 and the applicant filed this application for leave to appeal to the court of appeal on 18th day of November, 2022. Also, the record in the file unveils that on 17th day of October, 2022, the applicant had applied for certified copy of judgment, decree and proceedings. Coincidentally, on the same date (17th day of October, 2022), his request for copy of judgment, decree and proceedings was honoured.

Now, consulting the law, it is clear that under the Tanzania Court of Appeal Rules ,2009, the application for leave to appeal to the court of

appeal must be filed within thirty days of the decision. This Rule provides that:

> *"45. In civil matters-:*
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> *(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."*

According to the provisions of rule 45 (a) above, it is my considered view that, the applicant ought to have filed his application for leave within thirty days after pronouncement of the impugned decision.

However, as things stand, the impugned decision was delivered on 20th day of September, 2022, and application for leave to appeal was filed on 18th day of November, 2022. Counting the days, it is almost 60 days lapsed. Literally, this signify that the application was filed far-off out of time.

Nevertheless, even if we can consider that the applicant was unveiled with the requested copies of judgment and decree on 17th day of October, 2022, and there may be some days which ought to be

discounted, in my opinion that will not help. I am aware of the position of the law in terms of section 4 and 19 (1) (2) of the Law of Limitation Act, Ca. 89 R. E 2019 which provides:

> *"19 (1) In computing the period of limitation for any proceedings, the day from which such period is to be computed shall be excluded.*
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> *(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, an application for review of judgement, the day on which the judgement complained of was delivered, and the period of time requisite for obtaining a copy of the decree appealed from or sought to be reviewed, shall be excluded.*
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> *(3) where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgement on which it is founded shall be excluded."*

Furthermore, it was similarly hard-pressed in the case of **Alex Senkoro and 3 Others v. Eliambuya Lyimo, Civil Appeal No. 16 of 2017,** where it was categorically observed by the Court of Appeal that:

> *"The exclusion is automatic as long as there is proof on the record of the dates of the critical events for the reckoning of the prescribed limitation period. For the purpose of section 19(2) and (3) of the LLA, these dates are the date of the impugned decision, the date on which a copy of the*

decree or judgement was requested and the date of the supply of the requested document."

Also, by consulting the provisions of section 60 (1) (b) of Interpretations of Laws Act, Cap. 1 R. E 2019 which excludes the day of the date of service in computation of the 30 days from the date of service, the damage will still exist. This section provides:

"S. 60 (1) - In computing a time for purposes of a written law -

(b) where a period of time is expressed to be reckoned from, or after, a specified day, that day shall not be included in the period."

Now, cramming from the above, the same could not have helped this application to survive. For instance, counting the days, it will be 31 days from the date of service. Similarly, that is still out of time for one (1) day which should have been accounted for. Thus, failure to account for any day of delay (say it a single day), renders the application incompetent and worth to be struck out. The case of **Hassan Bushiri v. Latifa Lukio Mashayo, Civil Application No. 3 of 2007** is illustrative on the requirement of the applicant being accounted for every day of delay when the Court held as follows:

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

In view of the foregoing, I am convinced that the application at hand is time barred. That being the case, there is no need to engross my time analysing the second ground of objection. The first ground has managed to dispose the entire application.

From the above reasoning, the preliminary objection is accordingly sustained. As it was rightly pointed out by the respondent, that the presupposed remedy at this stage is to strike out the application for being incompetent. I concur with him, and I hereby do strike it out with costs.

It is ordered.

DATED at **DODOMA** this 10th day of July, 2023.

S. H. HASSAN

JUDGE