

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

**IN THE SUB-REGISTRY OF MANYARA**

**AT BABATI**

**MISC. LAND APPLICATION NO. 39 OF 2023**

*(Arising from Land Appeal No. 2 of 2022 at High Court Manyara and District Land and Housing Tribunal of  
Dongobesh Land Application No. 22 of 2022)*

**LIBERATI RAFAELI.....APPLICANT**

**VERSUS**

**THE REGISTERED TRUSTEES OF KANISA LA MUNGU**

**TANZANIA.....RESPONDENT**

**RULING**

*28<sup>th</sup> & 31<sup>st</sup> July, 2023*

***Kahyoza, J.:***

**Liberati Raphael** (Liberati) lost an appeal before this Court in a matter which commenced before the District Land and Housing Tribunal (the tribunal). Desiring to appeal to the Court of Appeal, he instituted an application to this Court for leave to appeal to the Court of Appeal. Before the application was set for hearing, the Registered Trustees of Kanisa la Mungu Tanzania (the Trustees) raised a preliminary objection that the application was time barred.

The issue for determination is whether the application is time barred. Liberati was a respondent in an appeal instituted by the Trustees. On the

13<sup>th</sup> March, 2023, this Court delivered its judgment declaring Liberati a judgment debtor in the presence of his advocate.

Aggrieved, Liberati lodged a notice of appeal through his advocate on 18.04.2023 and applied for copies of proceedings, judgment, and decree for purposes of appeal. He obtained the documents, prepared and lodged the memorandum of appeal together with record of appeal on 12.05.2023. After he lodged his appeal, Liberati filed the instant application for leave to appeal. The respondent raised a preliminary objection that the application was filed out of time. The preliminary objection was heard by way of written submissions.

The respondent's advocate, Mr. Abdallah Kilobwa, submitted that when a party is dissatisfied with the decision of the High Court and intends to appeal to the Court of Appeal of Tanzania, he is required to file an application for leave within thirty days from the date of the judgment. The record shows that the judgment was delivered on 13.3.2023 and the instant application was filed on 27.5.2023, thus, it was filed out of time.

The respondent's advocate prayed the application to be dismissed for being time barred. To supports his prayer, he cited the case of **Khalifan**

**Seba Kakuki V. Nasra Khalid Hamed**, Misc. Land Application No. 17 of 2019- High court Sumbawanga (Unreported).

The applicant's advocate submitted that it is true that the court delivered its judgment on 13.3.2023. He submitted that he filed a notice of appeal on time computing dates from the date they received a rectified copy of the judgment. He contended that the Court issued them a copy of judgment which had errors to be rectified. They approached the Deputy Registrar praying for the Court to rectify the judgment. The Deputy Registrar supplied them a correct copy of judgment on 20.5.2023. After receiving the correct copy of the judgment, he filed the application for leave.

Irrefutably, a person who wishes to appeal against a decision of the High Court exercising its revisional or appellate jurisdiction must apply for leave. See section 47(2) of the **Land Disputes Court Act**, [ Cap. 216 R. E. 2019] (the **LDCA**). The procedure to apply for leave is governed by the **Tanzania Court of Appeal Rules**, GN. No. 368 of 2009 as stipulated by section 47(4) of the **LDCA**. Rule 45(a) of the Court of Appeals Rules, provides that on application for leave should be instituted by chamber summons within thirty days of the decision. It states-

*"45. In Civil matters:-*

(a) *notwithstanding the provisions of rule 46, 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"*  
(Emphasis added)

It is also undisputed that an application for leave can be competently instituted after and only after, the aggrieved party has lodged a notice of appeal. See Rule 46 of the Court of Appeal Rules. A notice of appeal in Civil matters should be lodged within 30 days of the decision as provided under Rule 83 of the Court of Appeal Rules. Rule 46 of the Court of Appeal Rules states-

*"46.-(1)Where an application for a certificate or for leave is necessary, it shall be made after the notice of appeal is lodged."*

Given the position of the law, the applicant was required to first lodge the notice of appeal within 30 days from 13.3.2023 and within the same period to institute the instant application, that is an application for leave. Simple arithmetic depicts that from 13.3.2023 when the judgment was delivered, (30) thirty days expired on 12.4.2023. The record illustrates further that, the applicant lodged the notice of appeal on 18.4.2023 that is

after the expiry of the 30 days. Since he could not have filed the application for leave without filing a notice of appeal, I do not think that he delayed to apply for leave because the Deputy Registrar delayed to supply him a correct judgment. It is obvious that the applicant did not require a copy of the judgment to lodge a notice of appeal.

In addition, the law does not require an applicant to attach a copy of the judgment to an application he ought to have filed an application for leave despite having a copy of the judgment with errors. Furthermore, the applicant's advocate did not disclose the errors in the judgment that prevented him to lodge an application for leave. To add salt to an injury, there is no proof that the applicant was supplied with rectified judgment on 20/5/2023 as alleged or proof that they contacted the Deputy Registrar praying for rectified copy.

Finally, even if, it was true that the applicant obtained a copy of the judgment of this Court lately, he ought to have applied for extension of time to lodge a notice of appeal and an application for leave. It is settled that since there is no requirement to attach a copy of the judgment to an application for leave to appeal, time spent for obtaining a copy cannot be

deducted automatically in computing time within which to lodge an application for leave.

In the end, I sustain the preliminary objection that the application for leave was time barred for that reason incompetent. The next question is whether to dismiss or strike out the application filed out of time. The respondent's advocate prayed for dismissal of the time barred application. He supported his prayer with the decision of this court in **Khalfan Seba Kakuki V. Nasra Khalid** (supra). The Court of Appeal Rules are silent whether an application for leave filed out of time ought to be dismissed or struck out. I am alive of the position of law that the Law of Limitation does not apply to situation under review. I am not in a position to support the decision of this Court in **Khalfan Seba Kakuki V. Nasra Khalid** (supra) which dismissed an application for leave filed out of time. The Court of Appeal in **Cyprian Mamboleo Hiza V. Eva Kioso and Mrs. Semwaiko**, Civil Appeal No. 3 of 2010 (unreported) while entertained a matter where the High Court had dismissed an application for leave following the respondent's preliminary objection observed that-

*"It is important to observe here that one would have expected the judge to strike it out rather than dismiss it because he did not determine the application merit"*

I will strike out the application on the strength of the decision of the Court of Appeal cited above, as I did not determine the application on merit.


I, therefore, sustain the preliminary objection that the application for leave was filed out of time and strike it out with costs.

It is ordered accordingly.

Dated at Babati this **31<sup>st</sup>** day of **July**, 2023.

  
  
**John R. Kahyoza,**  
**Judge**

**Court:** Ruling delivered in the presence of the applicant and his advocate. The respondent was absent. Ms Fatina (RMA) is present.

  
**John R. Kahyoza,**  
**Judge**  
**31. 07.2023**