

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(MOROGORO DISTRICT REGISTRY)
AT MOROGORO

MISC. LAND APPLICATION NO. 50 OF 2022

(Arising from Misc. Land Appeal No. 31 of 2019, in the Resident Magistrates Court of Dar Salaam at Kivukoni (Extended Jurisdiction), Originating from Land Appeal No. 418 of 2028, in the DLHT for Kilombero)

WILLIAM MFUPA MAKOTI APPLICANT

VERSUS

SINGFRIDA MPWAPWA RESPONDENT

RULING

Hearing date on: 22/08/2023

Ruling date on: 25/08/2023

NGWEMBE, J.

This ruling is in respect of the application preferred by the applicant William Mfupa Makoti, under section 14 (1) of **the Law of Limitation Act [Cap 89 RE 2019]** seeking for extension of time within which to file an application for revision. The affidavit sworn by the applicant himself supported this application.

According to his affidavit, he unsuccessfully sued the respondent in Land Case No. 31 of 2019 which was decided on 28/10/2021. Though from little information disclosed by the applicant, I discovered that the above was not the original case, rather was Land Appeal arising from Misc. Land Appeal No. 418 of 2018. At least, the applicant states that, he had a plan to challenge the decision, but found himself out of time due to the fact that, the court did not supply him with copies in time as the 'judge' who held the case was assigned other duties. Actually, the case was not heard by a judge as the applicant suggests, it is clear from the annexure that, the said decision was handled by the Resident

Magistrate with extended jurisdiction. As presented, most of the facts were obscurely and negligently presented by the applicant. It requires much strain to get a bit of what the applicant was communicating to the court. However, this may be aggravated by the fact that, the applicant is a layman and he seem to have failed to secure legal services from qualified lawyers.

On the adverse side, the respondent filed his counter affidavit resisting the application. She mainly contended that, the applicant's failure to file his revision was due to negligence and nothing else. Stated further that, the applicant has never accounted for any single day of delay out of 9 months from the date of delivery of the court judgment.

When this application came up for hearing, the applicant submitted that, he is intending to file a revision to this court so that the size of the land in dispute can be ascertained whether it was 15 x 15 or 15 x 47 paces and that he was not objecting the judgment, which was made in favour of the respondent. The respondent argued that the application has no merit, same is a pure abuse of court process. She prayed this application be dismissed so that she may proceed with execution of the decree entered in her favour.

At this point the court is going to decide whether or not to grant the application. The provision cited by the applicant in moving this court is section 14 (1) of **The Law of Limitation Act, [Cap 89 RE 2019]**. The section provides general powers of the court to extend period of time limitation for filing an appeal or an application. This is a general provision whose application in some cases cannot stand alone, especially when there are other provisions regulating the procedure to do certain legal act. Yet the applicant cited no provision of **The Appellate Jurisdiction Act**. In my view the Act would have been relevant in his application.

Further, it is noted that, a decision which the applicant contemplates to challenge was made by the Resident Magistrates' Court of Dar es Salaam at Kivukoni exercising extended jurisdiction, but not the High Court judge as the applicant stated in his affidavit. It is known that when a subordinate court makes a decision in exercise of extended jurisdiction, such decision is deemed to be a decision of the High Court. See **Shariff Ahmed Salim Vs. Kullaten Abdalla Khamis (Znz Civil Application 3 of 2006) [2006] TZCA 29**. Appeals and revisions lie therefrom to the Court of Appeal. This being the case, it is known that this court and the Court of Appeal have concurrent powers in respect of some applications.

As ruled earlier in the preliminary objection, this court is conferred with powers to grant species of applications in respect of the matters intended to be presented before the Court of Appeal. However, such powers are somehow limited. This court is conferred with jurisdiction to grant application for leave to appeal to the Court of Appeal and certificate on points of law. Likewise, application for extension of time to file application for leave, certificate on points of law and notice of appeal. This is in accordance to section 11 (1) of **The Appellate Jurisdiction Act, Cap 141 R.E 2019** which is quoted hereunder: -

Section 11 (1) *"Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a 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."

This is also implied by rule 44, 45, 45A and 46 of **The Court of Appeal Rules**. Otherwise, extension of time for performing any act which should have been performed before the Court of Appeal itself, will be properly sought and established if made before the Court of Appeal.

Extension of time for doing the acts done before the Court of Appeal itself, which includes revision and appeal against the decision of the High Court, is provided under Rule 10 of **The Court of Appeal Rules**, which reads *inter alia*: -


Rule 10. *"The Court may, upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or tribunal, for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended."*

Considering deeply on this application, the applicant does not seek for extension of time in order to do any of the acts, which this court is empowered to deal with. Apart from the omission to cite proper provisions as observed above, what the applicant seeks before this court is not grantable and I think there is no need of testing whether or not he has accounted for the days he delayed. The application seeks for the reliefs which this court cannot give. There are many reasons why this court cannot grant the relief sought. Hereunder I will demonstrate some of them.

First, in his chamber summons the applicant did not state the court in which he wanted to file the said revision. He just stated that the tribunal (maybe he meant this court) may be pleased to grant an order

for extension of time to file revision out of time. No specific law was cited under which he wanted this court to exercise the jurisdiction for extension of time. However, having referred to the documents annexed, this court noted that the decision sought to be challenged was heard by subordinate court exercising extended jurisdiction. Regardless of the relief intending to be sought, such applications were to be made before the same court that is Resident Magistrate Court. The Court of Appeal in the case of **Alonda Ekela Vs. Republic (Criminal Appeal 1 of 2020) [2021] TZCA 267** insisted in the following words: -

"There are several decisions of the Court which reiterate that section 11 (1) of the AJA clearly makes a distinction that where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, has exclusive jurisdiction to extend the time for giving notice of intention to appeal from a judgment of the subordinate court concerned... In LUKELO UHAHULA V. R. (supra), the Court raised jurisdictional issue regarding an extension of time to file a notice of appeal, which the High Court Judge granted over an appeal against a decision of a Resident Magistrate with extended jurisdiction. The Court concluded that it was improper for the High Court to entertain the application for extension to file the notice of appeal on a matter which was not in the High Court Registry following its transfer to the Resident Magistrates' Court."



However, in this case it was never clear of what the applicant wanted, at least until when hearing of the application was made. I observed earlier that, the applicant's pleadings were not well prepared due to lack of legal service.

Second, assuming what he submitted deserved consideration by this court, if all other weaknesses were ignored, the applicant pointed out that he needed this court to give clarification on the size of the land in dispute through this revision. This statement again is nothing clear to easily grasp what the applicant meant. At least I am confident that clarifications of that nature may have been sought through review and not through revision. Review would be filed before the trial court provided it is clothed with powers to review its decision. Regarding circumstances under which review can be made, see the cases of **Chandrakant Joshubhai Patel Vs. R, [2004] T.L.R 218 and Transport Equipment Ltd Vs. Devram P. Valambhia, Civil Application No. 18 of 1993**. But we are clearly aware that review can in no way work as a revision or appeal. The Court of Appeal in another case of **Raphael Saiboku vs. Shenya John Imori (Civil Application 132 of 2022) [2022] TZCA 763** referring to its previous decisions, it stated as follows: -

"We are alive to a well-known principle that a review is by no means an appeal in disguise. To put it differently, in a review the court should not sit on appeal against its own judgment in the same proceedings. We are also mindful of the fact that as a matter of public policy litigation must come to an end hence the Latin Maxim - interestei reipublicae ut finis litium"

Third, even if the applicant may have sought to revise the judgment as his chamber application and affidavit show, revision would not be dealt with by this court nor the extended jurisdiction subordinate court. Revisional and appellate jurisdiction are generally vested on the superior court. The court which decided the matter or its concurrent, cannot revise such decision or order. In law, the court having made the decision it cannot have powers to revise the same. It goes obviously that

revisional powers, just like appellate powers generally do run vertically and not horizontally. This court and the Court of Appeal have maintained that position in a number of decisions including the cases of **Yakobo John Masanja Vs. Mic Tanzania Limited (Revision Application No. 385 of 2022) [2023] TZHCLD 1130**, **Serenity on The Lake Ltd Vs. Dorcas Martin Nyanda (Civil Revision 1 of 2019) [2019] TZCA 65** and **Millicom Tanzania NV Vs. James Alan Russels Bell & Others (Civil Revision 3 of 2017) [2018] TZCA 355**. And this court in **Iron and Steel Limited Vs. Martin Kumalda and 117 Others (Labour Revision No. 169 of 2022) [2022] TZHCLD 1009**, held *inter alia*: -

"A court cannot exercise a revisional power over the same Court... revisional powers are exercised only vertically and never horizontally"

One of the fundamental parameters of revision is that the court enjoying revisionary powers should be hierarchically higher than the court which gave the decision subject of revision. In this application I made an observation that the decision intended to be revised was issued by a subordinate court with extended jurisdiction. Such court for revision purpose is same as the High Court. Without prejudice to other statement of the law regarding extended jurisdiction, this court cannot revise such decision.

There is a good point on why the intended revision itself is to be addressed together with the extension of time. This court having seen that it will not be able to hear any revision against the decision which the applicant refers, it would not be prudent for the same court to grant such extension of time for filing the revision which is prohibited by law. Powers of the courts are exercised with a clear purpose. The powers cannot be exercised to give permission for a party to pursue a recourse

which will be incompetent or allowing such recourse before an incompetent forum.

It follows therefore that, this application cannot succeed. Apart from other weaknesses detected, the extension of time sought in the chamber summons and the contemplated revision which the applicant intends to pursue, altogether fall outside this court's jurisdiction.

Based on the chain of reasons as such, I am determined to dismiss this application with costs.

Order accordingly.

Dated at Morogoro this 25th day of August, 2023.



P. J. NGWEMBE

JUDGE

25/08/2023

Court: Ruling delivered at Morogoro in chambers this 25th day of August, 2023 in the presence of the applicant and the respondent.

Right to appeal to the Court of Appeal explained.



P. J. NGWEMBE

JUDGE

25/08/2023