

**IN THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**HIGH COURT OF TANZANIA**

**MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**MISC. LAND APPLICATION NO. 16 OF 2023**

*( C/F Bill of Costs No. 122 of 2020 at the District Land and Housing Tribunal for Moshi at Moshi)*

**HASSAN SAID ..... APPLICANT**

**VERSUS**

**ELIAS WILSON**

**GOODLUCK LYAHONA**

**VAILET NYANGE**



**.....RESPONDENTS**

**RULING**

Date of Last Order: 17.08.2023

Date of Ruling : 18.09.2023

**MONGELLA, J.**

The applicant herein filed this application seeking for enlargement of time to file his reference out of time and to be granted costs of this application. While filing his counter affidavit, the respondents raised three points of objection, to wit;

1. *That, this honourable court has no jurisdiction to determine this matter for there is a notice of appeal filed by the applicant on 23<sup>rd</sup> February, 2023.*

2. *That, the application is fatally defective for being Res Judicata.*

3. *That, the application is fatally defective for bearing defective jurat of attestation.*

The parties made their submissions orally. The applicant was unrepresented while the respondents were represented by Mr. Benedict Bagiliye, learned Advocate. Before submitting, Mr. Bagiliye abandoned the third point of objection.

Arguing on the 1<sup>st</sup> point of objection, Mr. Bagiliye averred that this court lacks jurisdiction to entertain the application because the applicant has filed notice of appeal before the Court of Appeal since 23.02.2023. He had the stance that given the fact that the applicant has taken the initial step in the appeal process before the Court of Appeal, this is rendered with no jurisdiction to resolve this application for enlargement of time to file reference.

On the 2<sup>nd</sup> point of objection, he contended that this application is a res judicata since the reference was resolved on merits and dismissed for being time barred and thus the available remedy was to file an appeal. He fortified his argument with the case of **Makamba Kigome and Another vs. Ubungo Farm Implements Ltd. and Another**, Civil Appeal No. 92 of 2008 (CAT decision) in which the Court held that limitation finally determines the rights of the parties. He made further reference to the case of **Tanzania**

**Breweries Ltd. vs. Edson Muganyizi Barongo and 17 Others**, Misc. Labour Application No. 79 of 2014 HCLD (unreported) and that of **Hashim Madongo and 2 Others vs. Minister for Industry and Trade and Two Others**, Civil Appeal No. 27 of 2003 (CAT, unreported). He therefore prayed for the application to be dismissed with costs.

In reply, the applicant had nothing much to say. He admitted to have filed the notice of appeal before the Court of Appeal. He contended that it was after he had filed the notice of appeal before the Court of Appeal when he found out that he ought to have filed the application at hand so that the matter could be heard afresh and so he filed this application.

Rejoining, Mr. Bagiliye maintained that the applicant's notice of application was still operative because if it was really withdrawn the same would have been served to the respondents. That, that being the case, the appeal is still standing at the Court of Appeal. He further argued that the appellant did not mention which lawyer advised him on the application. He neither provided any authority to support his claim rendering the points of objection remaining unchallenged. He maintained his prayers for the application to be dismissed with costs.

I have dispassionately considered the points of preliminary objection and the submissions by both parties. Briefly, the history of this application is that the applicant herein was aggrieved by Bill of Costs No. 122 of 2020 originating from Application No. 143 of 2019

before the District Land and Housing Tribunal of Moshi at Moshi. He thus filed Land Appeal No. 59 of 2022 before this court challenging the same. The respondents objected the appeal on two points of law; **one**, that this court was improperly moved and; **two**, that the application was time barred. This court found the two points of objection with merit and thus dismissed the appeal. Prior to the applicant's filing the application at hand seeking for enlargement of time, he filed notice of appeal before the Court of Appeal which was duly served to the respondents.

Regarding the 1<sup>st</sup> point of objection in which the respondents claim that this court lacks jurisdiction to entertain this application due to the notice of appeal being filed before the Court of Appeal; it is well settled position by the Court of Appeal, that once a notice of appeal has been filed, the High Court ceases to have jurisdiction over any matter under which the notice is filed. See: **Exaud Gabriel Mmari vs. Yona Seti Akyo & Others** (Civil Appeal 91 of 2019) [2021] TZCA 726; **Attorney General vs. Tanzania Ports Authority & Another** (Civil Application 467 of 2016) [2020] TZCA 380; **Mohamed Enterprises T. Ltd. vs. The Chief Harbour Master & Another** (Civil Appeal 24 of 2015) [2018] TZCA 280; **Tanzania Electric Supply Company Limited vs Dowans Holdings (Costa Rica) & Another** (Civil Application 142 of 2012) [2013] TZCA 437 all from TANZLII, just to mention a few.

In **Tanzania Electric Supply Company Limited vs. Dowans Holdings (Costa Rica) & Another** (supra), for instance, the Court held:

*“It is settled law in our jurisprudence, which is not disputed by counsel for the applicant, that the lodging of a notice of appeal in this Court against an appealable decree or order of the High Court, commences proceedings in the Court. **We are equally convinced that it has long been established law that once a notice of appeal has been duly lodged, the High Court ceases to have jurisdiction over the matter.**”*

The matter referred to the Court of Appeal by the applicant is based on the Bill of Costs filed before the District Land and Housing Tribunal and the appeal referred to this court. There is no evidence as to whether the notice of appeal has been withdrawn. The appeal therefore stands in existence in the Court of Appeal rendering this court with no jurisdiction to entertain the application at hand.

The first point of objection is thus found to have merit and is sustained accordingly. In that respect, I find no relevance to deliberate on the second point of objection. The application is dismissed with costs.

Dated and delivered at Moshi on this 18<sup>th</sup> day of September, 2023.



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L. M. MONGELLA  
JUDGE  
Signed by: L. M. MONGELLA

