

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
THE SUB- REGISTRY OF MWANZA
AT MWANZA**

MISC LAND APPLICATION NO. 84 OF 2023

[From Land Appeal No. 07 of 2022]

GERVAS KAFULA -----APPLICANT

Versus

BAHAYEH BUPAMBA----- RESPONDENT

RULING

Sept. 20th & 29th, 2023

Morris, J

The Order of this Court dismissing land appeal number 7 of 2022 on 15/06/2022 aggrieved the applicant above. He is now moving the Court to readmit it. His application is supported by own affidavit. However, his move meets the respondent's preliminary rebuff. The latter has filed a preliminary point of objection (PO) asserting that the application is time barred.

In brief, the applicant appealed to this Court upon being disgruntled with decision of the District Land and Housing Tribunal for Geita (DLHT) in land appeal no. 7 of 2022 that originated from a trial Ward Tribunal. Allegedly, he filed the said appeal at the DLHT for it to be transmitted to



this Court. It is also his claim that, on 21/06/2022, the applicant herein came to know that his appeal had been dismissed for want of prosecution about a week earlier; on 15/06/2022. Hence, the objective of this application is to have the appeal readmitted and heard on merit.

During hearing of the PO, the applicant was unrepresented. The respondent, however, enjoyed representation of Advocate John Edward. In favor of the PO, it was submitted that the current proceedings intend to challenge the Court's decision of 15/6/2022. But the same were initiated online on 11/8/2023; well, way out of time. The defence counsel cited ***the Law of Limitation Act***, Cap 89, R.E 2019 (***the LLA***) and argued that under part III item 9 thereof, the present application should have been filed within 30 days. To him, the current matter is about 14 months late. Moreover, he submitted that no leave has been exhibited to prove that he secured extension of time from the Court. Therefore, he prayed for the application to be dismissed with costs.

In reply the applicant conceded that his appeal was indeed dismissed on 15/6/2022. He was, however, quick to state that on 8/7/2022 he filed Misc. Land Application No. 54/2022 for restoration of appeal which was scheduled for hearing on 31/8/2022. Subsequently, on



21/7/2023, the said application was struck out for having cited a wrong law. Nonetheless, he argued that he was given leave to refile the appropriate application in 30 days of the order. Further, he stated that he encountered challenges with the online filing but on 14/8/2023 he managed to get the control number and thus paid the filing fees. He prayed for the PO to be overruled.

In rejoinder Mr. Edward submitted that Misc. Land Application No. 54/2022 was struck out without giving the applicant leave to refile. Instead, the same bears it the order that he was allowed to refile it appropriately subject to other laws.

I have keenly considered the submissions of the parties. As it was correctly submitted for the respondent, item 9 of part III to ***the LLA*** enjoins an aggrieved party to file the requisite application for readmission of appeal within 30 days from the date of the dismissal order. From ordinary counting of days, this application was filed more than 13 months after such Order.

Through his oral submissions, the applicant notified this Court that he previously filed an alike application which was struck out for being incompetent. Further, he alleged to have had been given 30 days to file



another application. This argument was vigorously opposed by Mr. Edward. I resorted to the applicant's affidavit. Therein, the applicant does not depose having filed the similar application before, or at all. The Court's ruling in Misc. Land Application No. 54 of 2022 was neither attached to the affidavit or counter affidavit.

The foregoing parties' omission notwithstanding, I took the **judicial notice** and I read the said ruling on my own initiatives. The ruling was delivered on 21/7/2023. At page 5 of the said ruling the Court ruled thus:-

*"The preliminary objection raised by the respondent is upheld, and the application is hereby struck out. **The applicant is at liberty to refile the application under the correct provision of the law, subject of the law of limitation**"*
(bolding added for emphasis).

From the excerpt above, it is incontestably clear that the Court did not give the applicant the alleged 30-day leave to file this application. In the pure and express holding of the Court, the applicant was ordered to observed the law of limitation. He was, therefore, duty bound to file the present application upon securing the extension of time. That is, his present move should have been preceded by the Court's leave thereof. Lest, this application is time barred. Indeed, the applicant has presently



come to Court rather late. I do not think that this Court now has different words or phrase to candy-coat the applicant's plight.

It is cardinal law that when the matter is filed out of time, the court lacks jurisdiction to determine it on merit. See, for instance; ***Denis T. Mkasa v Farida Hamza (administratrix of the estate of Hamza Adam) & Another***, Civil Application No. 407 of 2020; ***John Barnabas v Hadija Shomari***, Civil Appeal No. 195 of 2018; and ***Muse Zongori Kisere v Richard Kisika Mugendi and 2 others***, Civil Application No. 244/01 of 2019 (all unreported).

This application, henceforward, stands dismissed for being filed out of time. Each party will bear own costs. It is so ordered and parties' right of appeal is fully explained to them.



C.K.K. Morris

Judge

September 29th, 2023

Ruling delivered this 29th day of September 2023 in the presence of Gervas Kafula, the applicant; and Bahaye H. Bupamba, the respondent together with Advocate John Edward for the latter.



C.K.K. Morris

Judge

September 29th, 2023

