

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB-REGISTRY)**

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 522 OF 2023

(Arising from the decision of Kinondoni District Court in Civil Appeal No. 70 of 2022)

DAVID EDSON MAYANGA..... APPLICANT

VERSUS

WISTON MEDARD MZUNGURESPONDENT

RULING

29th February & 20th May, 2024

DYASOBERA, J.:

The applicant filed the instant application under section 41(1) and (2) of the Land Disputes Courts Act (hereinafter referred to as the LDCA) seeking for one substantive relief that, this court be pleased to grant him an extension of time within which to file an appeal against the decision of the Kinondoni District Court at Kinondoni in Civil Appeal No. 70 of 2022 delivered on 28/7/2023.

The application is supported by an affidavit sworn by the applicant himself on one hand. On the other hand, the respondent filed a counter affidavit to contest the application.

A brief factual background underlying the instant matter as gathered from the record goes thus; the respondent advanced to the applicant a loan to the tune of Tshs. 10 million. Owing the applicant's failure to honour the terms of the loan the respondent filed a case before the Kinondoni Primary Court. The respondent carried the day.

The applicant was aggrieved by the decision of the trial court. He filed an appeal before the District Court of Kinondoni. After hearing the parties, the first appellate court found the appeal lacking in merit and dismissed it. The applicant intended to appeal against the decision of the first appellate court but found himself time barred , hence this application.

When the application was called on for hearing, the applicant was represented by Mr. Akiza Rugemalila learned Advocate, while the respondent did not enter appearance, hence the hearing of the application ex-parte against the respondent.

Supporting the application Mr. Rugemalila urged the court to grant he application on account that he has advanced sufficient reasons for the court to exercise its discretion for extension of time. He submitted that the delay

for filing the appeal within the prescribed time was occasioned by a belated supply of a copy of judgment. According to him, he wrote three different letters requesting for the copy of the judgment and that by the time the copy of judgment was supplied to him, time for appealing had already lapsed. In buttressing the argument, reference was made to to the case of **Golden Enock Sichelwe vs. Felista Acqurine Shirima**, Misc. Land Application No. 121 of 2020 where it was held that since there was no reasonable delay after having a copy of judgement then there was a reason sufficient to grant extension of time.

It was further submitted that there is an illegality on the judgment of the first appellate court for failure to nullify the decision of the trial primary court which had no jurisdiction to entertain the matter as it was purely commercial matter. Basing on the above reasons, the learned advocate urged the court to grant the prayers sought.

Having gone through the applicant's submission, the sole issue calling for determination is whether the application has merits.

As the chamber summons shows, this application has been preferred under section 41(1) and (2) of the Land Dispute Courts Act which provides that: -

41.-(1) Subject to the provisions of any law for the time being in force, **all appeals, revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction** shall be heard by the High Court.

(2) An appeal under subsection (1) may be lodged within forty-five days after the date of the decision or order:

Provided that, the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five days.

Apparently, according to the above provisions, an application for extension of time can lie to this court under sub-sections (1) and (2) of Section 41 of the Act where the decision sought to be challenged is in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction. As the applicant might be aware, the present application arises from the decision of Kinondoni District Court in Civil Appeal No. 70 of 2022 originating from Kinondoni Primary Court on breach of loan agreement.

Clearly, this application has been filed under the wrong provisions of law in that, apart from the fact that the impugned decision sought to be

challenged is not in respect of any proceeding in a District Land and Housing Tribunal, the record is clear that the first appellate court was not exercising its original jurisdiction. A settled law is that wrong citation or failure to cite it renders the application incompetent. This was held by the Court of Appeal in **China Henan International Cooperation Group Vs. Salvand Rwegasira** [2006] TLR 220.

The same Court had the same view in **Majura Magafu and Peter Swai Vs. the Managing Editor, Majira Newspapers and Another**, Civil Application No. 203 of 2013, CAT at DSM (unreported) as well as in the case of **Jimmy Lugendo Vs. CRDB Bank Ltd**, Civil Application No. 171 of 2017

Likewise, the position of the law is that that wrong citation of the enabling provision of the law goes to the root of the case, hence cannot be cured through the principle of overriding objective. This was vividly stated by the Court of Appeal in the case of **Puma Energy Tanzania Limited Vs. Ruby Roadways (T) Limited**, Civil Appeal No. 3 of 2008 CAT Dar es Salaam (Unreported).

Now, what is the remedy for wrong citation? In **Jimmy Lugendo Vs. CRDB Bank Ltd** (supra), the Court of Appeal held that the remedy for wrong citation is the striking out of the matter with costs.

With those legal positions, I hereby find that since the application in question has been made under the wrong provision of law, the same cannot be granted as the court lacks jurisdiction to grant it for having been not properly moved. Consequently, the application stands struck out with no order as to costs.

It is so ordered.



W. P. Dyansobera

JUDGE

20.5.2024

This ruling is delivered under my hand and the seal of this Court on this 20th day of May, 2024 in the presence of Ms. Wande Hamis holding brief for Mr. Akiza Hamza, learned counsel for the applicant. The respondent is absent.



W. P. Dyansobera

JUDGE