

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT ARUSHA**

MISC. LAND APPLICATION NO. 5 OF 2008

*(C/f Application No. 158 of 2005 in the District Court Land
and Housing Tribunal of Arusha)*

SAID RAMADHANI APPLICANT

VERSUS

JUMA SIMILE RESPONDENT

R U L I N G

BEFORE: HON. NGWALA, J:

The applicant viz said Ramadhani has filed an application seeking leave to appeal out of time. His application was filed in court on 16th July, 2008, but he has since then never attended in court.

The Respondent on his part, upon receipt of the said application, he appeared in court on 18th November, 2008, before the District Registrar, on that date the applicant did not attend, the hearing of the application was adjourned to 16th February, 2009 when the court ordered that the summons should be issued against the applicant. It is unknown if the summons have ever been served

upon the applicant because in all the proceedings in this record dated 2nd July, 2009, 10th July, 2009, 11th August, 2009, 25th September 2009 and today the 19th November, 2009 its only the respondent who has been attending in court only to be given an order for adjournment to a next scheduled date as aforesaid.

Upon perusal of the record, I have noted that the Respondent had filed both a counter affidavit and a notice of Preliminary Objection on points of law, resisting the application on grounds that the affidavit in support of the application is improperly verified, and that the applicant has failed to comply with the provisions of Order VI Rule 15 sub Rule 1 and 2 thereof of the Civil Procedure Code, CAP 33 R.E. 2002.

Similarly it is in the said notice and affidavit that the Applicant has failed to produce any document in support of this allegations of being bed ridden or his dilatoriness to appeal against the judgment of the Tribunal. He has showed no proper grounds of intended appeal to the High Court Land Division. The appellant has delayed to appeal for more than five months or so, Worse he is neither following up his application nor has he attached a copy of the Intended Memorandum of appeal in support of his application. Besides, the applicant never filed a copy of the notice of intention to appeal, and he has clearly admitted this fact on his last paragraph,

but one paragraph of his affidavit, on the 4th paragraph where he states, I quote:-

*"that, now, I have got a relief, I see a need to pray
to appeal out of time and hereby attach this affidavit
with a leaf of a copy my notice of appeal"*

The purported notice of Appeal as stated on his forth paragraph is not attached with his affidavit, and as rightly pointed out by the Respondent in his counter affidavit, this is a clear case in which the applicant's affidavit has failed to show convincing grounds of his dilatoriness to appeal against the judgment and decree of the District Land and Housing Tribunal for Arusha Region.

In the case at hand I also find that the applicant has not attached a copy of the intended Appeal which according to the rules of practice in courts of law of this country or land, is of necessity to be accompanied with the Chamber Summons and or affidavit in support of the Application so that the court can see and determine if the intended appeal has chances of success. It is clear from the record that the applicant claimed land which did not belong to him and that he produce documents which did not support that the suit land belonged to him.

I am satisfied in the circumstances that the application is meritless. Hence it must fail; it will be a waste time to allow it. Accordingly it is dismissed with costs.

Order Accordingly.

A.F. NGWALA

J U D G E

19/11/2009

COURT: Ruling delivered in the presence of the Respondent and in the absence of the Applicant.

Court: Applicant to be notified.

A.F. NGWALA

J U D G E

19/11/2009