

**H.E. HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT TANGA**

**MISCELLANEOUS LAND CASE APPLICATION NO 15 OF 2012**

**HAMISI ATHUMAN SHUNDA.....APPLICANT**

**VERSUS**

**GADIEL MDOE SHEKIALILO,.....RESPONDENT**

**RULING**

**H. KALOMBOLA, J**

Applicant filed this application by way of Chamber Summons supported by an affidavit. He has invoked the provisions of Section 52(2) of the Land Disputes Courts Act, Cap 216 R.E. 2002, Section 14(1) of the Law of Limitation Act, Cap 89 R.E. 2002 and any other enabling provisions of the law moving the Court to grant the following prayers:-

1. That, the applicant be given leave to file an appeal out of time against the ruling of Tanga District Land and Housing Tribunal delivered on 14<sup>th</sup> July, 2010 in Land Appeal no 10/2009.
2. Costs be borne in the course.

3. Any other order(s) the Court deems fit to grant.

Both parties were represented, Mr. Chanjarika for applicant and Mr. Mramba for respondent.

Mr. Chanjarika started by arguing that the judgment of District Land and Housing Tribunal was delivered on 21/7/2010 but the applicant could not file appeal on time because he was appointed to join operation at the DRC whereby he left the country on 10/2/2011. And that the judgment was delivered in his absence, while at DRC (as per annexure H 1). That soon after his arrival back to Tanzania he found time of which he could have filed appeal had expired, hence this application. He insisted this application should be granted and if granted the court would see that there are important points which require determination.

In response, Mr. Mramba strongly rejected the application and submission at large reasoning that paragraph 4(a) of the affidavit only shows reasons for delay and time of leaving the country and where he came back on 15/5/2011. This application was filed on 27/3/2012, so in counting of the days, 305 days had elapsed since his coming back to Tanzania i.e. about a year. That the affidavit does not show anywhere why

he stayed that long without filing this application. In the premises, this Court cannot deal with any other issue or point which was not shown in the affidavit.

Moreover, Mr. Mramba said, the applicant relies on Section 14(1) of the law of Limitation Act (as per Chamber Summons), but there is no cause at all shown by the applicant for the delay of the 305 days.

Further, he said, this application has been brought under wrong provision of the law. Section 52 (2) of the Land Disputes Courts Act, Cap 216 cited is not enabling provision for this court to grant extension of time. He cemented his argument by the Court of appeal case, BAHADIR SHARIF RASHID AND TWO OTHERS VRS MANSOOR SHARIF RASHID AND ANOTHER, Civil application No 127/2006, Dar es Salaam (unreported). He thus asks for dismissal of the application with costs.

Mr. Chanjarika rejoined that its not true that the applicant stayed silently after coming back from DRC. As regard to Section 52 (2) of the Land Disputes Courts Act, he submitted it to be a proper provision to the situation at hand as it is found under Customary Law (Limitation of Proceedings) Rules 1964 and insist for this court to grant the application.

Basing on the submissions of both sides, let me first concentrate on the provisions of law cited in this application to find as to whether they are relevant to the application and that they could move this court to grant extension of time.

The applicant has cited provisions of Section 52 (2) of the Land Disputes Court Act Cap 216 and for purpose of clarity this section provides:-

S. 52(2)

“The law of Limitation Act shall apply to proceedings in the District Land and Housing Tribunal and the High Court (Land Division) in the exercise of their respective original jurisdiction”.

With due respected, I hesitated to agree with the counsel for applicant that this section moves this court to grant extension of time. To my interpretation, this section only allows the Law of Limitation to be applied in matters before the District Land and Housing Tribunal and the High court exercising their original jurisdictions. Moreover, Section 14 (1) of the Law of Limitation Act cannot save the applicant because this appeal originates from the decision of Sungu Ward Tribunal and Law governing

appeals originating from Ward Tribunal is the Land Disputes Courts Act, Cap 216, under Section 38 (1).

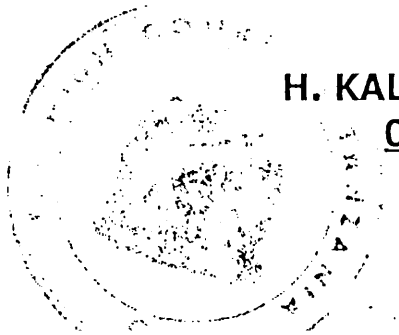
With the above observation the instant application is incompetent as the Court has not been properly moved to act on what is supposed to do. The consequence of non citation of enabling provision of Law from which the Court derives powers to grant extension is fatal and leads to the striking out of particular application as it was properly submitted by respondent's counsel who also correctly cited the case of BAHADIR SHARIF (Supra) whereby the application was found incompetent for being brought under wrong provision of the Law.

The effect of non citation or citation of wrong provision of the Law has also been discussed in number of cases including the famous case of EDWARD BACHWA AND 3 OTHERS VRS THE ATTORNEY GENERAL AND ANOTHER, Civil Application No 128/2006 (unreported).

In that case, I will not labour myself determining on merits this application because I have already found this court has not been properly moved to exercise its jurisdiction in this particular situation.

In the upshot, this application is struck out with costs.

It is ordered.



*H. Kalombola*  
**H. KALOMBOLA, JUDGE**  
**04/07/2014**