

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND CASE APPL. NO. 709 OF 2017

**MWAMBAYA MASHAKA.....1ST APPLICANT
IRENE KATARAHYA.....2ND APPLICANT**

VERSUS

**AMINA NASSORO (Administratix of the
estate of MWERESI MBWANA).....RESPONDENT**

Date of Last Order: 21.05.2018

Date of Ruling: 31.05.2018

R U L I N G

S.A.N. WAMBURA J,

This is an application for leave to appeal to the Court of Appeal as the applicants **Mwambaya Mashaka** and **Irene Katarahiya** were aggrieved by the decision of this Court dated 04/08/2017 in Land Appeal No. 127 of 2016.

The Chamber Summons is supported by an affidavit sworn by one **Wallace Boniface Mfuko** Advocate for the applicant.

The respondent **Amina Nassoro (Administratix of the estate of MWERESI MBWANA)** filed a counter affidavit challenging the application.

The applicant was represented by Mr. Mfuko learned Counsel whereas the respondent enjoyed the legal services of Mr. Mshana Advocate.

In support of this application Mr. Mfuko argued that there are legal issues that need to be determined by the Court of Appeal. He contended that the trial Judge erred in law in dismissing an appeal instead of striking it out. He therefore prayed for the application to be granted as prayed.

In rebuttable, Mr. Mshana averred that any proceeding which is time barred shall be dismissed as provided under Section 3(1) of the Law of Limitation Act Cap. 89 R.E. 2002. He therefore prayed for the dismissal of the application with costs.

I have carefully read the averments in the affidavit in support of the application and at the same time gone through the counter affidavit filed by the respondent.

In examining the merits of the application of this nature, the Court of Appeal has in various cases insisted that in order for the

applicant to be granted leave to appeal to the Court of Appeal, there must be points of law worth consideration by the Court of Appeal.

It is obvious therefore that leave to appeal is not automatic, it is discretionary, and there has to be a point of law or point of public importance as was held in the case of **Harban Haji Mosi and Another Vs. Omar Hilal Seif and Another [2001] TLR 409** at Pg 414 - 415, the Court of Appeal stated thus:-

“Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceedings as a whole reveal such disturbing features as to require the guidance of the Court of Appeal. The purpose of the provision is therefore to spare the court the specter of unmeriting matters and to enable it to give adequate attention to cases of true public importance.”

Basing on the facts averred in the affidavit especially paragraph 4 (i) (ii), the applicants have failed to establish that there is a point of law needed for consideration by the Court of Appeal. This is because the Court of Appeal has already ruled that the remedy

of a suit which has been filed out of time as stated by the law is dismissal as it was held in the case of **Hashim Madongo and Others VS Minister for Industry and Trade and Others** Civil Appeal No. 27 of 2003 CAT (Unreported). In the case of **Consolidated Holdings Corporation Vs. Rajani Industries & Another**, Civil Appeal No. 2 of 2002, Dar es salaam Registry (Unreported) the Court of Appeal, at page 23, stated that:-

“.....once a defence of Limitation is accepted, the suit has to be dismissed...”

I thus believe that there is nothing new to be determined by the Court of Appeal. The application thus fails to stand.

Costs follow the event.

S.A.N. WAMBURA

JUDGE
31.05.2018