

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

**MISC. LAND APPLICATION NO. 987 OF 2016**

*(Originating from the Decision of Hon. Mgonya, J in Land Appeal No. 07 of 2013).*

**ROGATI TISA.....APPLICANT**

**VERSUS**

**EMMY J. OGONG.....RESPONDENT**

**RULING**

*Date of the Ruling 27<sup>th</sup> August 2018*

**R.J. KEREFU, J**

The applicant herein filed this Application under Section 11(1) of the Appellate Jurisdiction Act, Cap. 141 [R.E. 2002] praying for extension of time to allow the applicant to lodge appeal against the decision of the Kinondoni District Land and Housing Tribunal in Land Appeal No. 07 of 2013 out of time. The Application is supported by an Affidavit deposed by one Ereneus Peter Swai, the learned Counsel for the applicant.

On the other side the respondent was served through a substituted service in a Mwananchi News Paper of 27<sup>th</sup> September 2017 at page 32, but he did

not appear. On 30<sup>th</sup> April 2018, the Court ordered the matter to proceed ex parte against the respondent.

On 27<sup>th</sup> August 2018, when the matter was called for hearing of ex parte proof, the applicant was represented by Mr. Kephass Mahenje, the learned Counsel. Before receiving the said ex parte proof, the Court requested Mr. Mahenje to read Section 38(1) of the Land Disputes Courts Act, Cap. 216 R.E. 2002 and address the Court if the Application is properly filed before the Court and whether the Court is properly moved to grant the applicant's prayers indicated in the Chamber Summons.

After perusal of the said provisions and Section 11 (1) of the Appellate Jurisdiction Act, (supra), Mr. Mahenje informed the Court that, the matter is incompetent before the Court for citing wrong provisions of the law. As such he prayed for necessary orders.

It is settled law in this Country that, an application brought under wrong provision(s) or non-citation of enabling provision(s) of the law is incompetent and ought to be struck out. There are numerous authorities to this effect and some of them include **Edward Bachwa & 3 others v. Attorney General & others**, Civil Application No.128 OF 2008; **China**

**Henan International Co-operation Group v. Salvand K. A. Rwegasira**, Civil Application (2006) TLR 220 and **Citibank Tanzania Limited v. Tanzania Telecommunication Co. Ltd & 4 Others**, Civil Application No.64 of 2009 Court of Appeal of Tanzania, to mention but a few.

It is on record that the decision the applicant seeks for an extension of time to challenge originated from Wazo Ward Tribunal in Land Case No. 309 of 2012. Therefore, the appropriate provision is Section 38(1) of the Land Disputes Courts Act, (supra) which provides that:-

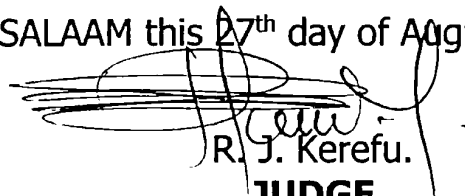
***“Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court. Provided that, the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired”.*** [Emphasis added].

It is therefore clear that, Section 11 (1) of the Appellate Jurisdiction Act, (supra), is wrongly cited because this is purely a land matter, where Land Acts are applicable. Hence wrong citation of the provisions of the law by the applicant and this Court is not properly moved to grant orders prayed by the applicant in the Chamber Summons.

In the event and taking into account that, the Application before this Court is incompetent, I do not see the need of keeping the same in our record. The remedy for incompetent Application is to be struck out. I therefore declare that, *Misc. Land Application No. 987 of 2016* is hereby struck out. I make no order as to costs.

It is so ordered.

DATED at DAR ES SALAAM this 27<sup>th</sup> day of August 2018.

  
R. J. Kerefu.  
**JUDGE**  
27/08/2018