

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

AT DAR ES SALAAM

MISC.LAND APPLICATION NO 303 OF 2018

KHADIJA LEMA.....APPLICANT
VERSUS
ENOCK MPAMWA1ST RESPONDENT
ALAWI SHABANI KONDO.....2ND RESPONDENT

Date of last order: 08/07/2019.
Date of Ruling: 23/09/2019.

RULING

A. MOHAMED, J:

Khadija Lema, the applicant, seeks this Court to certify that there is point of law involved in the appeal to the Court of Appeal and prays to appeal out of time against the decision of this Court in Misc. Application No. 568 of 2015 for extension of time to restore her appeal that was dismissed on 30/3/2016 (Hon. Ndika, J).

Aggrieved by that decision, the appellant intends to lodge an appeal to the Court of Appeal. Under section 47 (2) of the Land Disputes Courts Act (Cap 216 RE 2002, leave of this Court is a requisite condition in all matters originating or on appeal from

the lower tribunals. She also cited section 11(1) of the Appellate Jurisdiction Act, (Cap. 141 R.E. 2002) as an enabling Provision.

On 8/4/2019, this Court ordered the application be disposed of by way of written submissions.

In support of the application, the applicant submitted that she was aggrieved by the decision of the District Land and Housing Tribunal for Ilala in Land Appeal No. 54 of 2009 that reversed the Segerea Ward Tribunal's decision that had been in her favour. That her Land Appeal No 38 of 2011 was dismissed by this Court for want of prosecution. The applicant avers she was unable to prosecute it on account of illness. Her Misc Land Application No. 568 of 2015 seeking for restoration of the appeal was similarly dismissed by this Court (Ndika, J). She now seeks this Court to certify there is a point of law involved for the Court of Appeal to consider. She further prays for extension of time to lodge her appeal.

In support of her averments, the applicant referred this Court to the case of **Mohamed Mohamed and Another v. Omar Khatib, Civil Appeal No. 68 of 2011 at pages 10-11** (unreported) that held that a Court may extend time upon reasonable cause.

She further cited the case of **Regional Manager Tanroads v. Ruaha Concrete Co. Ltd, Civil Application No. 96 of 1997** to bolster her position.

For the respondent, Mr. Samwel Shadrack, learned counsel opposed the application for two reasons. First, that the applicant has not stated anything in her averments on the certification of a point of law that is requisite under section 47 (2) of the Land Disputes Courts Act (Cap 216 RE 2002) for the Court of Appeal's consideration. And secondly; that the applicant's Misc. Land Application No. 568 seeking for restoration of Land Appeal No 38 of 2011 was dismissed after Hon. Ndika J. discovered that the applicant had not presented sufficient reasons that warranted extension of time. The counsel assailed the applicant's medical reports as found by Hon Judge Ndika. In winding up, the counsel urged this court to refuse grant of the application on account of the applicant's failure to adduce sufficient grounds for extension of time.

Having examined the parties' rival submissions as well as the record, I will now consider merits of the matter.

Let me first consider whether the applicant is required to state the point(s) of law that need the Court of Appeal's indulgence as is required under section 47 (2) of the Land Disputes Courts Act.

Section 47(2), referred to by both parties, requires this Court to certify there is a point of law involved in an appeal for the Court of Appeal's consideration from a decision originating from the lower tribunals. Nonetheless, I am of the view this requirement is not necessary in the instant case as the applicant is simply challenging this Court's order that dismissed her application for extension of time to restore her appeal. In this appeal, no substantive matter is involved. It would appear to me this requirement is in regard to substantive appeals that impinge on disputes between parties such as questions on ownership of land or legality of mortgages.

As regard the claim that the applicant's present appeal is forlorn as Hon. Judge Ndika had discovered and found there were no sufficient reasons adduced by the applicant in Misc. Application No. 568 of 2015 for extension of time, I think this is the

bone of contention that is to be properly determined by the Court of Appeal.

Next, I wish to reproduce section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 R.E 2002 cited by the applicant to move this application. It reads;

"S. 11 (1) Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired"

Considering that the applicant is a lay person, I am also persuaded by the reasoning of this Court in the case of **Ramadhani Nyoni v. M/s Haule & Company Advocates (1996) TLR 71 (H C)** that observed:-

"In a case where a layman, unaware of the process of the machinery of justice, tries to get relief before the courts, procedural rules should not be used to defeat justice."

In view of the above decision, I am of the view that the applicant was indeed not cognizant of the process of the machinery of justice and she is now trying to get reprieve from this Court.

For the foregoing reasons, I find merit in this application and grant the application with no order for costs.

It is so ordered.



**A. MOHAMED,
JUDGE,
23/09/2019.**