

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC LAND APPLICATION NO. 599 OF 2019

*(Arising from the decision of the District Land and Housing in Tribunal for Ilala (Mgulambwa
Hon. Chairperson, in Application No. 33 of 2015)*

EUGIN FRANK MGIMBA.....APPLICANT

VERSUS

SEVERIN MTALO.....RESPONDENT

RULING

I. MAIGE, J

The instant application is for extension to appeal. While the chamber summons does not indicate which judgment the applicant is intending to appeal against, the title of the case in the affidavit suggests that the intended appeal is against the decision of the District Land and Housing Tribunal for Ilala ("the DLHT") in Misc. Land Application No. 33 of 2015. Yet, in paragraphs 2 and 3 of the affidavit, the applicant makes the following factual narration;-

"2. That the Respondent instituted a Land dispute vide case No. 7/2015 at Kinyerezi Ward Tribunal in which the judgment was entered in the Applicant's favour. A copy of the said Ward Tribunal

*decision is herewith annexed and marked as "**EFM1**" and the same forms part of the affidavit.*

*3. That the Respondent was aggrieved by the decision of the ward tribunal and challenged the same by way of Appeal at the District Land and Housing Tribunal of Ilala in which the Judgment was entered in favour of the Respondent in Land Application No. 33 of 2015. A copy of the said decision is herewith annexed and marked as "**EFM2**" and the same forms part of the affidavit".*

Conversely, there has not been attached in the affidavit any decision of the ward tribunal for Kinyerezi. Instead, there is only attached copies of a judgment and decree of the DLHT in Application No. 33 of 2015. Contrary to the factual deposition in paragraph 3 of the affidavit, the said decision is not on appeal. It is on trial.

At page 2 of his written submissions through his counsel Mr. Silvanus Nyamikindo, the applicant has described the decision he is intending to appeal against as "the decision of the District Land and Housing Tribunal for Ilala in Land Appeal no. 33 of 2015". He has reiterated so at page 3 of his written submissions. More to the point, the application has been brought under section 38(1) of the Land Dispute Courts Act No. 2 of 2002 which is an enabling provision for appeals against decisions of the **DLHT** on appeal. In his affidavit and written submissions, the applicant relies on illegality and sickness as justification for the grant of the application.

The respondent who in this matter appeared in person and unrepresented, views the application at hand to be devoid of any merit. In his view, there has not been demonstrated any element of illegality in the intended appeal. Neither does the affidavit demonstrate any justification for the delay.

Though a copy of the decision attached in the affidavit is of the **DLHT** on trial, the application at hand is for extension of time to appeal against a decision of the **DLHT** on appeal and it has been preferred under a provision of law which is applicable on second appeals. It is therefore, a matter of common sense that, the affidavit at hand cannot support the application. Assuming, which is not, that the intended decision is on trial, the application cannot stand in as much as it is preferred under a wrong provision of law.

In my opinion therefore, the application is not competently before the Court. It is accordingly struck out with costs.



I. Maige

JUDGE

22/05/2020



Date: 22/05/2020

Coram: Hon. C. Tengwa - DR

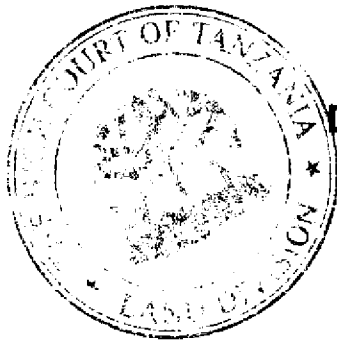
For the Applicant: Absent


For the Respondent: Present

RMA: Bukuku

COURT:

Ruling delivered in the presence of the respondent and in the absence of the applicant.




C. Tengwa

DEPUTY REGISTRAR

22/05/2020