

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC LAND APPLICATION NO. 188 OF 2020**

*(Arising from Misc. Land Appeal No. 123 of 2019 as per Hon. Robert, J)*

**IDDI UDDI MIIRUKO.....APPLICANT**

**VERSUS**

**SIMON N. SOKOLO.....RESPONDENT**

**RULING**

**I. MAIGE, J**

The application at hand is for leave to appeal to the Court of Appeal of Tanzania (“CAT”) against the decision of this Court on appeal. The matter at hand originated from the Ward Tribunal. The intended appeal is a third appeal.

The judgment sought to be appealed against should this application succeed was delivered on 25<sup>th</sup> March 2020. This application was filed on 9<sup>th</sup> April 2020. There is an interval of hardly 16 days in between. In his first point of preliminary objection, the respondent has doubted **whether the application was filed within the time limit.**

The application has been brought under the provisions of Section 5(1) (c) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 ("the AJA"), Rule 45(a) and 47 of the Tanzania Court of Appeal Rules, 2009. In his second point of preliminary objection, the respondent has questioned **whether the enabling provisions of law have been correctly cited.**

The application is supported by the affidavit of the applicant which contains 5 paragraphs. Paragraph 3 has items (a), (b), (c), (d) and (e). In the verification clause, the paragraph has been referred as paragraph 3 without mentioning the items therein. This has been negatively taken by the respondent and his counsel. Therefore, in the last point of preliminary objection, **an issue of the verification clause being defective has been raised.**

The argument for and against the preliminary objections was, by the direction of the Court, made by way of written submissions. Mr. Michael Kasungu, learned advocate, presented the written submissions in support of the preliminary objections. On his part, the applicant who was unrepresented, personally filed the written submissions. I have duly considered the rival submissions and it is appropriate that I consider the same.

I propose to start with the first point as to time limitation. The preliminary objection was based on an incorrect proposition that time limit for preferring an application for leave to appeal to the

Court of Appeal is 14 days. The respondent and his counsel, it would appear to me, are not informed with the current position of law on the time limit. In accordance with the amendment brought by GN. 362 of 2017, rule 45(a) of the Court of Appeal Rules has been amended so that the time limit to pursue an application for leave to appeal to the Court of Appeal where the appeal lies with the leave of the High Court to be 30 days from the date of the decision. The application was therefore filed within time. The preliminary objection is hereby overruled.

This now takes me to the second point as to citation of enabling provision of law. Mr. Kasungu submits that, for the reason of the year of the revised edition being cited as 2002 instead of 2019, the application is incompetently before the Court. I was referred to the authority of my learned brother Mlyambina J, in the **Registered Trustees Archdiocese of Dar Es Salaam vs. Adelmarsi Kamili Mosha**, Misc. Civil Application No. 32 of 2019 (Unreported) where the importance of citing correctly the year of the revised edition of the law was emphasized. In the said authority however, while my learned brother established as a fact that the revised edition of law was not correctly cited, he did not throw the application away. Neither did he say that incorrect citation of the year of the revised edition was fatal. In the **Legal and Human Right Centre and Another vs. the Attorney General Civil Cause No. 77 of 2005** this Court sitting as a constitutional court, took the view that wrong citation of the year of the revised edition was a minor

irregularity which could be ignored under article 107A(2) of the Constitution. I have not come across with any authority deciding otherwise. The counsel for the respondent could as well not afford to cite any. The authority of the Court of Appeal in **National Bank of Commerce vs. Sadrudin Meghji**, [1998] TLR 503, is **Commercial Application No. 399 of 2017 (Unreported)**, does address the issue of incorrect citation of the year of the revised edition. It only reinstates the settled position of law that citation of a wrong provision of law is fatal. It is observed as follows:-

*“It follows therefore that the application has been filed by a Notice of Motion under an inapplicable section of law. Consequently, as the court was not properly moved, the application is likewise incompetent”*

In the circumstance therefore, I would, but for further reasons to be assigned in due course, have agreed with the applicant that the omission to correctly cite the year of the revised edition of the law is a trivial irregularity which can be ignored under article 107 of the Constitution without leading to any failure of justice.

As I said above, the decision sought to be challenged to the Court of Appeal is of the High Court on second appeal. It originates from ward tribunal. The application has been preferred under section 5(1) (c) of the Appellate Jurisdiction Act, Cap. 141, R.E, 2019 which provides as follows:-

*5-(1) In civil proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal-*

**(a) Irrelevant**

**(b) Irrelevant**

*(c) With leave of the High Court or of the Court of Appeal, against every other decree, order, judgment, decision or finding of the High Court.*

The clause “*except where any other written law for the time being in force provides otherwise*” in the respective provision, would mean, in my reading that, the requirement of leave of the High Court or Court of Appeal in a decision of the High Court in exercise of appellate and revisional jurisdiction under the above provision is subjected to other written law in force. Section 47(3) of the **Land Courts Disputes Act, Cap. 2016, R.E., 2019** in my view, is one of such “*other written law for the time being in force*” envisaged in the said provision. It provides as follows:-

*(3) Where an appeal to the Court of Appeal originates from the Ward Tribunal the appellant shall be required to seek for the Certificate from the High Court certifying that there is a point of law involved.*

In this matter, the said specific law governing an appeal to the Court of Appeal against decisions of the High Court on land matter has not been cited. The applicant has only cited the general provision of section 5(1) (c) of the Appellate Jurisdiction Act which subjects itself to the Land Dispute Court Act as a specific law. I do not, in my view, think that the cited enabling provision of law can by itself move the Court for the application.

In any event, while the law requires certificate and not leave in the intended appeal, the applicant has applied for leave. The prayer, assuming it is granted, cannot enable the applicant to reach to the intended destination. He will obviously get lost for the grant will be irrelevant in the intended appeal.

In view of the for going reasons, I will agree, though on different ground that, this Court has not been properly moved and the application is incompetently before the Court. It is accordingly struck out. Since the ground for striking out was not raised by either of the parties, I will not give an order as to costs.

A handwritten signature in black ink, appearing to read 'I. Maige', with a large, stylized initial 'I' and a flourish at the end.

**JUDGE**

**06/11/2020**

**Date:** 06/11/2020

**Coram:** Hon. C. Tengwa - DR

For the Applicant: Present

For the Respondent: Kasungu Michael, Advocate

**RMA:** Bukuku

**COURT:** Ruling delivered today in the presence of both parties.



  
C. Tengwa  
**DEPUTY REGISTRAR**  
**06/11/2020**