

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

**MISC.LAND APPLICATION No.96 OF 2018**

*(Originating from the decision of the District Land and Housing Tribunal of Temeke in Land Appeal No.23 of 2015 and Misc. Land Appeal. No. 19 of 2016 of the High Court Land Division)*

**SWEDI MOHAMED.....APPLICANT**

**VERSUS**

**JACKSON RANGE.....RESPONDENT**

**RULING**

**S.M. MAGHIMBI, J:**

The Applicants has moved this Court under the provisions of Section 11 of the Appellate Jurisdiction Act, Cap 141 R.E 2002 ("The Act"), seeking for extension of time within which to file an application for leave to appeal to the Court of Appeal against the decision of this court in Misc. Land Appeal No. 19/2016. The application is supported by an affidavit of Swedi Mohamed, the applicant, dated 23<sup>rd</sup> day of January, 2018.

Before this court the Applicant was represented by Advocate Joseph Kipeche while the respondent enjoyed the services of Advocate Nyaronya Mwita Kicheere.

While filing his counter-affidavit, on the 04/05/2018, the respondent filed a notice of preliminary objection on point of law that:

1. That the Applicant's application is incompetent in law for want of proper provision of the law to move this court to grant the sought orders.
2. That the applicant's application is bad in law for want of proper citation of the name of the court.

The disposal of the objection raised proceeded by way of written submissions. The applicant did not file any reply submissions hence the disposal proceeds on the submissions filed by the respondent. In his submissions to support the objection, the respondent decided to abandon the 2<sup>nd</sup> preliminary objection and pursued only the first objection.

Submitting in support of the objection, Mr. Kicheere submitted that according to the chamber summons, the application has been brought under Section 11 of the Act which has two sub-sections as follows:

*(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.*

*(2) In criminal cases, in the case of a sentence of death, no extension of time shall be granted after the issue of the warrant for the execution of that sentence.*

He argued that the applicant did not cite the specific subsection under which the orders sought are allowed/permissible. That it is not the work of the court to gamble as to which subsection the applicant bases in his

application, whether sub section (1) or (2). He submitted that the Court of Appeal of Tanzania had an opportunity to deliberate on this situation of non-citation of the specific subsection relied upon in the case of ***Citibank Tanzania Limited Vs. Tanzania Telecommunication Co. Limited and 4 others, Civil Application No. 64 of 2003*** (unreported) where the Court cited with approval the old East African Case of ***Abdul Aziz Suleiman Vs. Nyaki Farmers Co-operative Ltd and another (1996) EA 409*** at page 16 where it was held:

*"the central issue then for consideration and determination is whether or not the applicant was justified in moving this court by merely citing S.4 of the Act and rule 3 of the court rules. With the greatest respect to Mr. Mujulizi, Learned Advocate, we do not think so. In the case of **Abdul Aziz Suleiman V Nyaki Farmers' Cooperative Ltd and another (1996) EA 409 (supra)** the court of appeal for East Africa observed that the rules .....at page 18*


*"Admittedly the applicant cited section 4 of the Act, which is an enabling provision that is a provision which vests in the court, inter alia, with a power to excise revisional jurisdiction. The Applicant however did not go far enough and mention the specific subsection that was applicable. As we have had occasion to point out, there are different consideration to be taken into account under section 4(2) and (3). It hardly needs to be overemphasized that in a notice of motion, an applicant must state the specific provision of the law under which the applicant wants to move the Court to exercise its jurisdiction."*

Mr. Kicheere submitted further that the applicant cited Section 11 of the Act without going further to cite the specific provision of the Section, whether sub section (1) or subsection (2) as the enabling provision empowering this court to grant the orders sought. He concluded that the remedy to the anomaly is to strike out the application and consequently prayed that the application be marked struck out with costs.

Having gone through the respondent submissions, the Chamber Summons is clear that the application has been filed under S.11 of the Act and no specific sub-section of the law was cited by the applicant. It is also pertinent to note at this point that the sub-section 2 of the cited Section 11 of the Act talks of matter of criminal nature in particular extension of time where the warrant of execution has been issued in the case of a death sentence. Indeed the two subsections require different considerations to be taken into account while determining whether or not time should be extended. Hence the citing of the specific sub-section of law under the circumstances was indispensable. As per the cited case of ***Citibank Tanzania Limited*** (Supra) it means that the court was not properly moved to *exercise* my discretion to extend time. The omission is fatal and renders the application incompetent. Owing to that, this application is hereby struck out with costs.

***Application Struck Out.***

Dated at Dar es Salaam this 27<sup>th</sup> day of February 2020.

  
.....  
**S.M. MAGHIMBI**  
**JUDGE**