

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

MISC. LAND CASE APPLICATION NO. 274 OF 2020

ALEX MAGANGA.....APPLICANT

VERSUS

**ABUBAKAR MKAKILE.....1ST RESPONDENT
DIRECTOR, DAR ES SALAAM**

CITY COUNCIL.....2ND RESPONDENT

Date of Last Order: 17.02.2021

Date of Ruling: 19.04.2021

RULING

V.L. MAKANI, J

The applicant ALEX MAGANGA has come to this court applying for leave to appeal to the Court of Appeal of Tanzania against the judgment dated 25/09/2012. The application is supported by the affidavit of the applicant herein.

Simultaneous with the filing of their counter affidavits the 1st and 2nd respondents raised a preliminary objection on point of law that:

*The application is time barred as it was filed on 26/05/2020 for leave to appeal against the decision of the High Court made on 25/09/2012 which is 8 years contrary to Rule 45 (a) of the Tanzania Court of Appeal Rules, 2009 as amended by government Notice No.362 of 2017 (**Court of Appeal Rules**) which requires that leave to appeal to Court of Appeal to be lodged within 30 days after the decision was made.*

The court ordered the objection to be argued by way of written submissions. Mr. Pascal Mshanga, Advocate drew and filed submissions on behalf of the 1st respondent, while Mr. Chavawe Mberesero, State Attorney drew and filed submission on behalf of the 2nd respondent. The applicant personally drew and filed his own submissions. The applicant had filed several submissions, but the court confine itself to the submissions on the preliminary objection raised.

The 1st and 2nd respondents were at one that the matter has been lodged out of time. Submitting in support of the application, Mr. Mshanga and Mberesero said the decision in Land Appeal No.74 of 2009 was delivered on 25/09/2012 and this application for leave has been filed on 26/09/2020. They said that it is against Rule 45 (a) of the Court of Appeal Rules which requires leave to appeal to be filed within 30 days from when the decision was delivered. They stated that the application at hand has been made after expiry of 8 years from when the decision was made. They prayed for the application to be dismissed with costs.

In reply the applicant said that he has bonafide been prosecuting other applications for leave to appeal. He mentioned these applications as Misc. Land Application No. 233/2012, No. 36/2013, No. 444 of 2016, No. 443 of 2017 and No. 863 of 2018. He relied on section 21(2) of the Law of Limitation Act Cap 89 RE 2002 (sic!) and insisted that he has been prosecuting the mentioned applications diligently and therefore the time he was prosecuting should be excluded when computing time limitation.

There was no rejoinder that was filed by respondents.

Having considered the submissions by both sides, the point for determination is whether the raised preliminary objection on a point of law has merit.

It is not disputed that the impugned judgment, Land Appeal No.74 of 2009, in which the applicant herein is applying for leave to appeal was delivered on 25/09/2012. This application was filed 06/10/2020, about 8 years from when the impugned decision was delivered. Rule 45 (a) provides 30 days within which one can apply for leave to appeal to the Court of Appeal. The alleges that he has bonafide and diligently

been prosecuting applications from 2012. For the sake of discussion, the following are on records:

- 1. Civil application No. 36 of 2013 was struck out on 19/04/2016*
- 2. Misc. Land Case Application No.444 of 2016 was struck out on 03/05/2017*
- 3. Misc. Land Case Application No.443 of 2017 was dismissed on 26/10/2018*
- 4. Misc. Land Application No.863 of 2018 was dismissed on 21/06/2019.*


It is apparent from the above that the last prosecuted application by the applicant was dismissed on 21/06/2019. The said application is similar to the present application and as stated earlier, the application has been filed more than 10 months from when the applicant's last application was dismissed.

Now what is the position? The prosecution of the above-mentioned applications does not automatically entitle exclusion of time, the applicant ought to have applied for extension of time where the issue of prosecuting other applications could have been considered. Short of that, the 30 days within which he was supposed to file application for leave to appeal to the Court of Appeal starts to run from

25/09/2012 when the impugned decision was delivered. Considering that this application was filed on 26/05/2020, simple calculations obviously show that this application is out of time contrary to the requirement of Rule 45(a) of the Court of Appeal Rules. In that respect the preliminary point of objection raised by the 1st and 2nd respondents has merit.

In the result, the application is time barred and I hereby proceed to dismiss it with costs.

It is so ordered.


V.L. MAKANI
JUDGE
19/04/2021