

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

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 41 OF 2021**

*(Arising from the Ruling of the High Court of Tanzania (Land Division) V.L. Makani,  
J. dated on 27 November, 2020 in Misc. Land Application No. 290 of 2020)*

**SAID HASSAN KINGIMALI..... APPLICANT**

**VERSUS**

**KASSIMU KONYOKIO .....RESPONDENT**

**RULING**

*Last order 21/6/2021  
Date of ruling 28/6/2021*

**B.E.K. MGANGA, J**

On 22<sup>nd</sup> January 2021 the Applicant filed this application seeking for an order to review the decision of this court (V.L. Makani, J) dated 27<sup>th</sup> November 2020 in Miscellaneous Land Application No. 290 of 2020 in which he was applying for certificate on point of law so that he can appeal to the court of Appeal. The application is supported by an affidavit of Twaha Issa Taslim, who is his advocate. On 27<sup>th</sup> March 2021, the application was resisted to, by the Respondent who filed the counter affidavit of his advocate Peter Madaha. On 21<sup>st</sup> June 2021 when the application came for hearing, Mr. Taslima advocate for the Applicant and

Mkila advocate for the Respondent prayed to argue the application by way of written submission as a result I granted their prayer.

In his written submission, Mr. Taslima advocate for the Applicant argued that the Applicant addressed this court on irregularities on law and procedures of hearing cases at the Tribunal, but he was denied for being out of time. He went on that; the issue of time bar is a statutory requirement either by the Law of Limitation Act [Cap. 89 R.E. 2019] or any other Written Laws as the case may be. He submitted that, the Law of Limitation Act is silent on the time available for application for certificate of point of law, but this court (Madam V.L. Makani J) held that it was supposed to be applied within 30 days from the date of judgment. It was further submitted on behalf of the Applicant that there is no any provisions of law which provides for 30 days within which an application for certificate on point of law can be made in court as it was determined by this court. He therefore submitted that; this court was not correct in limiting that period within 30 days.

On his part, Mr. Mkila advocate for the Respondent submitted that this application is, but with no merit and that it suffers to be dismissed. He went on that, the ruling that is a subject of this application for review was delivered on 27<sup>th</sup> November 2020. That, the Applicant has lodged this application 56 days after delivery of the said ruling. He submitted

further that, item 3 Part III of Column 2 of the Law of Limitation Act [Cap. 89 R.E 2019] provides 30 days as limit time within which a party may make application for review. He argued that, under the Civil Procedure Code, the time limit for application for review of a decree, judgment or order is 30 days. He therefore prayed for the dismissal of the application for being time bared.

I have considered submissions of both counsels and their affidavit, and counter affidavit to see whether there are grounds for this court to review its decision or not. It is undisputed by the parties that the law is silent on the time within which an application for certificate on point of law has to be made before the court. That is why my learned sister V.L. Makeni J in resolving the issue of time limit she was confronted with, traversed the provisions of the Land Disputed Court Act [Cap.216 R.E 2019] and came to the conclusion that it does not provide for time limit. Not only that but also, found that even the Court of Appeal Rules are silent on the time within which an application for certificate on point of law can be filed. Having confronted with that difficulty, this court resorted to Rule 45(a) of the Court of Appeal Rules that provides 30 days within which a person can make application for leave to appeal to the Court of Appeal. This court was mindful that Rule 45(a) of the Court of Appeal doesn't cover application for a certificate on points of law.

The court was further mindful that Rule 46(1) of the Rules only provides that an application for certificate on point of law has to be filed after filing the notice of appeal. It is my view therefore, that, it was not intended by Rule 46(1) of the Court of Appeal Rules that the said time will be indefinite as the Applicant wants me to believe. To me, the phrase "***be filed after filing the appeal***" in rule 46(1) supra, requires the Applicant to be prompt in making such application and not otherwise.

Now the issue is whether the Applicant promptly applied for Certificate on point of law or not.

In answering that issue, one has to read the affidavit in support of the application. It is stated in paragraph 7 of the affidavit of Mr. Twaha Issa Taslima in support of the application that:-

*"7. That the Applicant failed to apply for the Certificate on Point or Law immediately after February, 2020 because the issue of COVID19 Pandemic was rampant thus failed to act upon the Certificate immediately, until in early June 2020 when he applied for the Certificate when the Pandemic was widely reduced in Tanzania".*

I have read an affidavit of Mr. Twaha Issa Taslima which he deposed to on 13<sup>th</sup> May 2020 and filed in this court in support of Misc. Land

Application No: 290 of 2020, the subject of this application for review and find that the issue of COVID19 was not brought to the attention of this court. It is my opinion that, if at all the Applicant was prevented to make an application for Certificate on Point of Law soon after lodging his Notice of Appeal to the Court of Appeal on 6<sup>th</sup> December 2020 as stated in paragraph 6 of the affidavit of Twaha Issa Taslima, he could have so stated in his affidavit that was under consideration by my learned sister V.L. Makani J. That failure, in my view, is an indication that, this argument is an afterthought. Be as it may, neither the courts nor other offices within the United Republic of Tanzania suspended their operations due to the COVID19 Pandemic between February 2020 and June 2020 for me to accept what was averred by the Applicant in paragraph 7 quoted above.

I have also read the affidavit in support of the application to satisfy myself as to whether there are grounds for review or not. In paragraph 3 and 4 of that affidavit it was deponed as follows:-

*"3. That the Application was Misc. Land Application no.(sic) 2902020 which was entertained by Madam Judge V. L. MAKANI, this application was ruled out by dismissal, the ruling was basing (sic) on the fact that it was time barred for the applicant to stay for six months from 10/11/2019 to 1/6/2020 without filing an*

*application for a certificate on point of law, which was not correct as per the evidence adduced by the Applicant...*

4. *That the decision of Madam judge did not go through the evidence adduced by the Applicant, that he filed a letter on 6<sup>th</sup> January, 2020 notifying this honourable court that the certified judgment copy that he was given had depict matters which did not relate to his case which was Land Appeal No. 11 of 2019 where the judge was S.M. Maghimbi..."*

It is clear from the above quoted paragraphs of the affidavit in support of this application for review that the Applicant is challenging the decision of this court (V. L. Makani, J). That is why in his written submission he is arguing that this court was not correct to limit the time to 30 days within which application for certificate on point of law has to be made. It is my view that, the Applicant has made this application as an appeal in disguised. It is without doubt that, the invitation to decide whether the decision is correct or not is always made to the appellate court and not to the same court to review. I therefore, decline that invitation for an obvious reason that I don't have such power. The case of *Issa Hassani Uki vs. the Republic, Criminal Application No.122/07 of 2018* and that of *Halmashauri ya Kijiji cha Vilima Vitatu and another vs.*

*Udaghwenga Bayay and 16 others, Civil Appeal No.16 of 2013* are some of the many authorities to that effect. In the case of *Halmashauri ya Kijiji cha Vilima Vitatu's case (supra)* the Court of Appeal held that:-

"... A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of that matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review... An issue which has been hotly contested...cannot be reviewed by the same court which had adjudicated upon it."

In the case of *Patrick Sanga vs. The Republic, Criminal Application No. 8 of 2011*, the Court of Appeal stressed that:-

"the review process should never be allowed to be used as an appeal in disguised. There must be an end to litigation be it in civil or


*criminal proceedings. A call to re-assess the evidence, in our respectful opinion, is an appeal through the back door..."*

Looking at the affidavit in support of the application and submissions by counsel for the Applicant, it is clear to me that, this is an appeal in a disguised and not an issue of review. It cannot be said that there is an apparent error on the face of the record to attract review. It is rather an issue that require elaboration and interpretation of the law as to the time available for an Applicant to apply to the Court for certificate on point of law. For the foregoing, the application is hereby dismissed without costs.

Order accordingly.

Dated at Dar es Salaam this 28<sup>th</sup> day of June 2021.



  
**B.E.K. Mganga**  
**JUDGE**  
**28/6/2021**