

**IN THE HIGH COURT OF TANZANIA**  
**(LAND DIVISION)**  
**AT DAR ES SALAAM**  
**MISC. LAND APPLICATION NO.629 OF 2020**  
(Arising from Land Appeal No.56 of 2018)

**EMMANUEL ELIAZARY ..... APPLICANT**

**VERSUS**

**EZIRON K. NYAKABAKIRI ..... RESPONDENT**

**RULING**

Date of last Order: 16.08.2021

Date of Ruling: 27.08.2021

**A.Z.MGEYEKWA, J**

This application is brought under section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019], section 47 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] and section 95 of the Civil Procedure Code Cap. 33 [R.E 2019] and Rule 47 of the Court of Appeal Rules of 2009. The applicant seeks leave to appeal to the Court of Appeal of Tanzania to impugn the decision of this Court in Land Appeal No.56 of

2018. The application is supported by an affidavit deponed by Mr. Ntemi Ezekiel Massanja, the applicant's Advocate. The respondent opposed the application. In a counter-affidavit sworn by Eziron Nyakabakiri, the respondent and also raised a point of preliminaroy Objection as follows:-

1. *That this application is bad in law as it is brought under inapplicable law.*

When the matter was called for hearing before this court on 19<sup>th</sup> April, 2021, by the court ordered the preliminary objection application to be argued by way of written submissions whereas, the respondent filed his submission in chief on 04<sup>th</sup> May, 2021 and the appellant did not file his reply. Mention was set on 10<sup>th</sup> June, 2021 Mr. Baraka Mahugo, the applicant's Advocate was present but did not pray for extension of time to file a reply. Therefore this court proceeded to determine the matter expert against the applicant.

The respondent in his written submission was brief and straight to the point. He challenged the cited provisions by the applicant on the basis that the cited provision is improper in the eyes of the law. He argued that the proper provision to move this court to grant leave to appeal to the Court of Appeal of Tanzania is section 47 (2) of the Land Disputes Courts Act, Cap. 216 [R.E. 2019] instead of section 47 (1) of the Land Disputes Court

Act, Cap. 216 [R.E. 2019] since the matter did not emanate from the High Court on its original jurisdiction.

The learned counsel for the respondent further submitted that the applicant brought this application under wrong provisions for two reasons, first the suit originated from District Land and Housing tribunal for which he was required to obtain certificate on point of law in case was in time therefore was supposed to pray for leave in this court. Secondly, he lamented that the applicant's application is time barred for the reason that the main case for which appeal is preferred does not originate from the High Court of Tanzania and that Court of Appeal rules applies where the suit originates from the High Court.

In conclusion, he beckoned upon this court to dismiss the applicant's application for extension of time.

In reply, the applicant argued that the respondent's Advocate arguments are misconceived and lacks substance. He further submitted that the matter originate from the District Land and Housing Tribunal for Temeke vide Application No. 241 of 2014. It was his view that the appropriate avenue is to apply for leave at the High Court and not certificate on point of law. He cited the case of **Wilson Simon v Abogast**

**Kibobela**, Miscellaneous Land Application NO. 18 OF 2019 HC at Kigoma  
(Unreported) this Court held that:-

*“Certificate on point of law under section 5(2)(c) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002 is only required on third appeals ... The court of Appeal is thus going to the third Appeal. Under the circumstances certificate on point of law is necessary ... under the land disputes courts Act when the matter originates from the ward tribunal”.*

The learned counsel for the applicant went on to submit that the High Court is the court of the first instance on matters of extension of time relating to application for leave to the Court of Appeal. He cited section 11 (1) of Appellate Jurisdiction Act, Cap. 141 [R.E.2019] which grants the High Court among others, powers to extend time for filling an application for leave to appeal. To bolster his position, he cited the case of **Bupamba v Elisha Abel Shija**, Civil Application No. 438/08 of 2017, Court of Appeal at Mwanza. (Unreported).

The applicant continued to submit that the citation of the year 2002 instead of 2019 in the chamber summons, was a mere mistake in the description. He added that the error does not vitiate prejudice the respondent. He added that the same incident of fate was uncounted by

Hon. Masati J.A. (ad he then was) in the case of **Ottu On Behalf Of P.L. Assenga & 106 Others Ami Tanzania Limited**, Civil Application No. 35 of 2011, Court Of Appeal of Tanzania At Dar es Salaam (unreported).

It was his view that in any case where a court of law grants leave to refile without specifying time limit then such parties will bound by statutory time limit envisaged in Item 21 of Part III of the First Schedule of the Law of Limitation Act, Cap. 89 [R.E. 2019].

He further submitted that Hon Judge Wambura struck out the Petition of Appeal on the 2<sup>nd</sup> August, 2017 with leave to refile, the applicant refiled the matter on the 15<sup>th</sup> August, 2017 vide Land Appeal No. 56 of 2018. The refile was within 60 days provided in Item 21 of Part III of the First Schedule of the Law of Limitation Act Cap. 89 [R.E. 2019]. Therefore, it was his view that the Land Appeal No. 56 of 2018 was filed within the prescribed time since leave to refile was granted and dismissing the same by Judge Maghimbi , one would say she exercised her powers unjudicial.

On the strength of the above submission, the learned counsel for the appellant beckoned upon this court to overrule the preliminary objection for the same lacks merit.

As the practice of the Court has it, we had to determine the preliminary objection first before going into the merits or demerits of the appeal. That is the practice of the Court founded upon prudence which we could not overlook. Having gone through the court records and parties submissions, I am in position to determine the point of law raised by the learned counsel for the respondent that the instant application is bad in law as it is brought under inapplicable law. In determining the preliminary objection I will address the issue *whether the preliminary objection is meritorious?*

Without wasting the time of the court, I have to state from the outset that I fully subscribe to the learned counsel for the respondent submission. The applicant has cited a wrong provision of law which does not move this court to grant what is sought by the applicant. The applicant in his chamber summons has cited section 47 (1) of the Land Disputes Courts Act, Cap. 216 [R.E. 2019]. For ease of reference, I reproduce both sections as here under:-

*“ 47.-(1) A person who is aggrieved by the decision of the High Court in the exercise of its original jurisdiction may appeal to the Court of Appeal in accordance with the provisions of the Appellate Jurisdiction Act.”*

*“47 (2) “A person who is aggrieved by the decision of the High Court in the exercise of its revisional or **appellate** jurisdiction **may, with leave of the High Court** or Court of Appeal, appeal to the Court of Appeal.” [Emphasis added].*

Applying the above provisions of law, it is undoubted that in Land Appeal No.56 of 2018, this Court was exercising its appellate Jurisdiction and therefore any person aggrieved thereat had to seek leave as per Section 47 (2) of the Land Disputes Court Act, Cap. 216 [R.E.2019]. Moreover, the applicant did not state in his affidavit that he has lodged a Notice of Appeal before the Court of Appeal of Tanzania. The law requires an aggrieved party to lodge a notice of intention to appeal from the decision of this court or subordinate court. For ease of reference, I reproduce section 11 (1) of the Appellate Jurisdiction Act Cap. 141 [R.E 2019] as hereunder:-

*“ 11.-(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.” [Emphasis added].*

Based on the above cited provision of the law, I am in accord with the learned counsel for the respondent that the applicant was required to file a Notice of Appeal before this court. However, that was not done. As the result, this court was improperly moved to grant what is sought by the applicant and for failure to lodge a Notice of Appeal timely.

Given the above analysis and the position of the law, I sustain the preliminary objection and proceed to strike out the application for being incompetent.

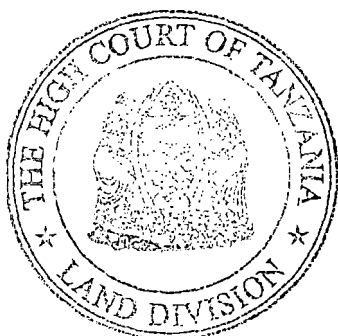
Order accordingly.

Dated at Dar es Salaam this date 27<sup>th</sup> July, 2021.



  
A.Z. MGEYEKWA  
JUDGE  
27.07.2021

Ruling delivered on 27<sup>th</sup> July, 2021 in the presence of Mr. Baraka Maugo, learned counsel for the applicant.



  
A.Z. MGEYEKWA  
JUDGE  
27.07.2021