

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

**MISC. LAND APPLICATION NO. 313 OF 2021**

**HUSSEIN KOROGWE CHAYUNGULA..... APPLICANT**

**VERSUS**

**SHAIBU AMON KOROGWE (the legal representative  
of ANGELINA HARUNA AMON) ..... RESPONDENT**

**R U L I N G**

*Date of last order: 25/11/2021*

*Date of Ruling: 22/11/2021*

**T. N. MWENEGOHA, J.**

The applicant has moved this Court through an application filed under Section 14 (1) of the Law of Limitation Act Cap. 89 R. E. 2019 praying for an order of extension of time to so as to enable him serve the respondent with copies of Notice of Appeal and letter of 19<sup>th</sup> of September, 2017 requesting certified copies of proceedings, ruling and order of this court made on 8<sup>th</sup> of September, 2017 in Land Appeal No. 67 of 2016.

The respondents raised a preliminary objection to the present application which was determined through written submissions.

The respondents were of the view that this Court has no jurisdiction to entertain an application for extension of time within which to serve both the Notice of Appeal and the letter requesting for copies of proceedings, ruling and order of the High Court.

They contended that it is a settled law that once a Notice of Appeal is filed under Rule 83 of the Court of Appeal Rules then it is the Court of Appeal that is seized of the matter in exclusion of the High Court except for applications specifically provided for, such as application for leave to appeal under section 5 (1) (c), (2) (a) of the Appellate Jurisdiction Act, Cap 141 R. E. 2019 or provision of a certificate of point of law under Section 5 (2) (c) of the Appellate Jurisdiction Act, or application for extension of time to lodge the Notice of Appeal out of time or application for extension of time to lodge application for Leave to Appeal under Section 11 (1) of the Appellate Jurisdiction Act.

They referred this Court to the case of **Awiniel Mutui and 3 Others vs. Stanley Ephata Kimambo (Attorney for Ephata Mathayo Kimambo), Civil Application No. 19 of 2014 (unreported)** at page 7 and the case of **Matsushita Electronics Co. Ltd vs. Charles George t/a CG travers, Civil Application No. 71 of 2001 (unreported)**.

It was their submission that, the jurisdiction to extended the time for serving both the Notice of Appeal and the letter requesting for copies of proceedings is in terms Rule 10 of the Court of Appeal Rules vested in the Court of Appeal of Tanzania and not the High Court.

They argued that Rule 3 of the Court of Appeal Rules defines the word Court to mean the Court of Appeal of the United Republic of Tanzania established by the Constitution, and includes any division of that Court and a single Judge exercising any power vested in him sitting alone.

They further submitted to this Court that Section 14 (1) of the Law of Limitation Act gives the High Court powers to extend the period of limitation for the institution of an appeal or an application.

They referred the provision to provides as follows;

Section 14 (1):

*"Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, **extend the period of limitation for the institution of an appeal or an application**, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application".*

(2) For the purposes of this section *"the court" means the court having jurisdiction to entertain the appeal or, as the case may be, the application".*

It was their argument that in order to bring Section 14 (1) and (2) of the Law of Limitation into play there are two conditions. **One**, the application should be for extension of the period of limitation for the institution of an appeal or application. And **two**, the court should be the court having jurisdiction to entertain the appeal or the application.

That in the present application the applicant is not seeking extension of the period of limitation for the institution of an appeal or an application so that to bring the application of Section 14 (1) of the Law of Limitation into play. Rather, the applicant is seeking extension of time within to serve a copy of the notice of appeal and the letter out of time and that such powers are vested in the Court of Appeal under Rule 10 of the Court of Appeal Rules. Hence, the High Court lacks jurisdiction to entertain the present application and the same should be struck out with costs

To all these, the applicant replied in the negative insisting that he is in a Court vested with jurisdiction to entertain the application. The advocate for the applicant, Mr. Mtondokoso argued that similar application was determined by this Court in the case of **Prof. Esther Mwaikambo versus Ernest Nyemo Mpilanga Misc. Land Application No. 560 of 2018 (High court of Tanzania, Land Division at Dar es salaam) unreported.**

He also continued to insist that invoking Section 14 of the Law of Limitation Act is proper. The applicant did not address respondent's argument on applicability of Rule 10 and 83 of the Court of Appeal Rules.

After considering the submissions from both parties, this court has to determine whether it has jurisdiction to entertain the present Application.

The counsel for the respondent Mr. Kipeche opposed this application as he believes that once Notice of Appeal is filed as per Rule 83 of the Court of Appeal Rules then it is the Court of Appeal that is seized of the matter in

exclusion of the High Court except for some applications as provided under section 5 of the Appellate Jurisdiction Act, Cap 141 R. E. 2019.

It is Mr. Kipeche's argument that the power to extend time in cases of late service of Notice of Appeal and the letter requesting for copies of proceedings is regulated under Rule 10 of the Court of Appeal Rules and therefore is vested to the Court of Appeal and not the High Court as the applicant is alleging.

Rule 10 of the Court of Appeal Rules provides that;

***"The Court may, upon good cause being shown, extend the time limited by these Rules or by any decision of the High Court or tribunal, for the doing of any act authorized or required by these, whether before or after the expiration of that time and whether before or after the doing of the act, and any reference in these Rules to any such time shall be construed as a reference to that time so extended".***

It is evident when one examines Rule 3 of the Court of Appeal Rules, the word Court in these Rules is defined to mean the Court of Appeal. It is therefore clear that the Court referred in Rule 10 above is Court of Appeal and not the High Court. I therefore I agree with the counsel that the jurisdiction to extend the time for serving both the Notice of Appeal and the letter requesting for copies of proceedings is in terms Rule 10 of the Court of Appeal Rules vested in the Court of Appeal of Tanzania and not the High Court.

Moreover, the respondent also argued that even the provision invoked, that of Section 14 (1) of the Law of Limitation Act is not a proper provision as the said section empowers this court to extend the period of limitation for the institution of an appeal or an application, both of which are different from the prayers of the applicant who is seeking extension of time within which to serve a copy of the notice of appeal and the letter out of time. Hence, Section 14(1) of the Law of Limitation Act cannot be invoked as relied upon by the applicant in the present application. I am in the agreement with the respondent that the provision does not vest the High Court with jurisdiction to extend the time for serving the Notice of Appeal and the letter requesting for proceedings out of time. Consequently, the contention of the applicant that he is in a Court vested with jurisdiction to entertain the application is incorrect.

At this juncture, I find it proper to express that the applicant is on wrong track, as indeed this Court has no jurisdiction to entertain the matter. Such application should have been lodged in the Court of Appeal. His application is indeed guided by Rule 10 of Court of Appeal Rules.

In consideration of the above, the preliminary objection is hereby sustained. Cost to follow the cause.

It is so ordered.



  
**T. N. MWENEGOHA**

**JUDGE**

**22/11/2021**