

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

LAND DIVISION

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 119 OF 2019

(Arising from Misc. Application No. 138 of 2018)

JUMAA MSHIHIRI.....APPLICANT

VERSUS

GABRIEL ANDREW.....1ST RESPONDENT

ALOYCE MAMKU.....2ND RESPONDENT

DAVID A NOBLE.....3RD RESPONDENT

JOHN PETER MAJURA.....4TH RESPONDENT

Last Order: 10/02/2021

Ruling date: 30/04/2021

RULING

MANGO, J.

The applicant seeks leave of this Court to appeal to the Court of Appeal of Tanzania against the decision of this Court in Misc. Land Application No. 138 of 2018. The application is by way of Chamber summons made under section 47(2) of the Land Disputes Courts Act supported by an affidavit sworn by the applicant, Jumaa Mshihiri. The application is contested by the respondents who filed a joint counter affidavit to that effect.

The applicant was represented by Mr. Lucco Stephen, learned advocate while the respondents were represented by Mr. Saiwello Kumwenda learned advocate. On 17th November 2020, this Court ordered the application to be argued by way of written submissions.

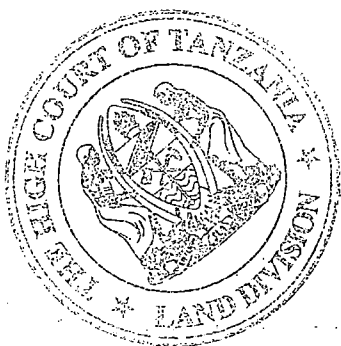
In his submission in chief, the applicant's counsel adopted the contents of the affidavit sworn in support of this application to form part of his submission. He mentioned the issue that need to be considered by the Court of Appeal of Tanzania to be inclusion of the period spent by the applicant waiting for copy of decree from the Tribunal in computing limit for appeal. He argued that, in determining Misc. Land Application No. 138 of 2018, this Court did not exclude time spent waiting for a copy of judgement from the Trial Tribunal. He cited section 19(2) of the Law of Limitations Act, [Cap. 89 R.E 2019] and the decision of the Court of Appeal of Tanzania in the case of **The Registered Trustees of Marian Faith Healing Centre" Wanamaombi versus The Registered Trustees of the Catholic Church Sumbawanga Diocese**, Civil Appeal No. 64 of 2007 Court of Appeal of Tanzania at Dar es salaam and argued that time spent waiting for copies of the decision to be appealed against need to be excluded. He is of the view that this issue worth to be determined by the Court of Appeal.

In his reply submission the respondents counsel admitted that Judgement of tribunal was delivered in November 2017, was ready for collection on 14th February 2018 and the Applicant filed his application for extension of time on 6th March 2018. He argued that, the applicant has not accounted for the delay of 20 days from when he received the copy of judgement from the Tribunal to the date of filing his application for extension of time. The learned counsel did not submit on whether time spent awaiting for copy of judgement from the tribunal need to be excluded in computing time limit for appeals or not.

From the submissions by both parties, it is not disputed that judgement of the tribunal was not supplied to the parties on time as it was supplied to them on 14th February 2018 when time limit for appeal has already expired. It is also not disputed that it took 20 days for the applicant to lodge his application for

extension of time from when he received the copy of judgement. The issue is whether time spent by the applicant waiting for the copy of judgement need to be excluded from computation of time limit for appeal or not. This Court has already determined the application for extension of time lodged by the applicant thus it cannot determine the issue raised by the applicant in this application.

For that reason, leave is hereby granted to the applicant to appeal to the Court of Appeal of Tanzania.



A handwritten signature in black ink, appearing to read "Z. D. Mango".

Z. D. MANGO
JUDGE
30/04/2021

ORIGINAL