

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

**AT DAR ES SALAAM**

**MISC. LAND CASE APPLICATION NO.485 OF 2020**

**HUSSEIN H. KINONDA.....APPLICANT**

**VERSUS**

**Edna Msangi (*as an Administratrix of the estate of the late***

***Said Msangi*).....RESPONDENT**

**RULING**

**OPIYO, J.**

The applicant is seeking for an order of extension of time so that he can lodge his Application for review out of time, against the ruling and drawn order of this court delivered by Mallaba J on 8<sup>th</sup>, August 2019. The application was brought under section 14 (1) of the Limitation Act, Cap 89, R.E 2019 and accompanied by the affidavit of the applicant, Hussein H. Kinonda. The respondent on the other part objected the application based on four points of law that:-

1. This court has no jurisdiction to entertain the present application.
2. The application is hopelessly time barred.
3. The application is made under non-existing law.
4. The application was brought under a wrong party.

Hearing of the objections was by way of written submissions; Mr. Mrindoko appeared for the respondent while the applicant enjoyed the legal services of Mr. Hamza Matongo.

Submitting for the respondent on the 1<sup>st</sup> objection, Mr. Mrindoko argued that after the decision of this court in the Land Appeal No. 7 of 2019, dated 8<sup>th</sup> November, 2019, the applicant preferred an appeal before the Court of Appeal of Tanzania by lodging his notice of appeal before it. The existence of a notice of appeal bars the applicant from initiating another proceeding in the lower courts against the respondent over the same matter which is pending at the Court of Appeal of Tanzania. This court therefore lacks jurisdiction over the matter at hand as stated in the case of **Aero Helicopters (T) Ltd versus FN Jensen (1990), TLR, 142 and also the case of William Mugurusi versus Stella Chamba (2004), TLR 406**. The application is incompetent and should therefore be struck out.

On the 2<sup>nd</sup> objection, the respondent's counsel relied on section 3 read together with Item 21 Part III of the 1<sup>st</sup> Schedule of the Law of Limitations Act, Cap 89 R.E 2019 where it is provided that, any application under the written laws which time limit is not prescribed, should reach the court within 60 days. The decision sought to be challenged by review was made on 8/11/2019 and the instant application was filed on 1/9/2020, about 11 months later. Mr. Mrindoko referred the court to the case of **Fuel Distribution network versus The Attorney General, Land Case No. 5 of 2003** and the case of **V.T Samky versus Alfred P Ngowi, Land Revision No. 48 of 2009** to support his argument.

He then went on to submit on the 3<sup>rd</sup> preliminary objection that, this application was brought under section 14(1) of the Law of Limitation Act, Cap 89 R.E 2002 as enabling provision, in fact the application should fail for improper citation of the enabling law. The Revised Edition of 2002 do not exist rather we have the Revised Edition of 2019 since February 2020. This application was filed on October the 6<sup>th</sup> 2020. It ought to have been brought under the new law.

Lastly, on the 4<sup>th</sup> objection, it was contended that the application was brought under the wrong party. The above-named respondent passed away during the proceedings before the Kinondoni District Land and Housing Tribunal and his widow, Edna Msangi took over as an Administratrix of the estate of Said Msangi. It is wrong for the applicant to bring this application against the deceased instead of the Administratrix of the estate of the late Said Msangi.

In reply, Mr. Hamza Matongo for the applicant admitted to have lodged a notice of appeal in this court and not the Court of Appeal of Tanzania. He insisted however that, he cannot appeal until he is granted leave subject to section 47(2), of the Land Disputes Courts Act, Cap 216 R.E 2019. Therefore, what he is seeking now is an extension of time to be allowed to apply for a review of the case that emanated from the District Land and Housing Tribunal for Kinondoni. Since there is no leave that has already been granted for the applicant to file his appeal to the Court of Appeal, then the contention by the respondent's counsel that, the court has no jurisdiction due to the fact that the matter is already before the court of Appeal is misconceived, he argued.

On the 2<sup>nd</sup> objection, the applicant's counsel maintained that, an application for extension of time has never been limited by time to the extent of itself being time barred. He went on to argue on the 3<sup>rd</sup> objection, in which he insisted that, the application is well brought under a right provision of Law, but there is a curable defect in the citation of the Law, instead of R.E 2002, it should be RE 2019. He cited the case of **The National Housing Corporation versus Etienne Hotel, Civil Application No. 10 of 2005** (unreported) that:-

*"It is well established principle that the object of the court is to decide the rights of the parties and not to punish them for mistakes they made in the conduct of their case by deciding otherwise than in accordance with their rights. I know of kind of error or mistake which if not fraudulent or intended to overreach, the court ought to correct, if it can be done without injustices to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy."*

Lastly on the 4<sup>th</sup> objection, Mr. Matongo was of the view that, the applicant's counsel is aware that the respondent passed away while case was at the Kinondoni District Land and Housing Tribunal and the Administratrix of the estate had already been appointed. However, the records were not changed to accommodate the name of the Administratrix of the respondent's estate. This is the reason why the application was preferred with the name of the late Said Msangi, deceased.

In his rejoinder, the respondent's counsel cemented his arguments he made in chief and stressed that the court lacks jurisdiction to entertain the matter for which notice is in place to the higher court.

Now, it is time for decision on the merit or otherwise of the four points of objections at hand in consideration of the rivalry submissions of the counsels for the parties hereinabove summarized. In the 1<sup>st</sup> objection, the contention is on the status of the notice of appeal which exists in this court having been lodged by the applicant after being dissatisfied with the ruling of Malaba J., which dismissed his appeal for being time barred. It is the same decision which the applicant now intends to challenge by way of review. The respondent's counsel maintained that, the existence of the said notice bars this court from entertaining the application at hand. The applicant admitted that the notice still exists, however, he argues that, he is yet to be granted the leave to Appeal to the Court of Appeal. To him that means, the appeal has not yet been initiated and this court still have powers to entertain the matter at hand:-

In my view, which is a rule well settled already in a number of authorities, a notice of appeal until withdrawn by the order of the court, remains operative (see **East African Development Bank v. Blueline Enterprises Limited, Civil Appeal No. 101 of 2009 (unreported)**). Since the notice is operative as it is in the case at hand, it seizes the powers of the High Court to entertain any issue in respect of the matter upon which the appeal is intended, save for an application for a leave to appeal or for a certification on point of law, see **Matsushita Electric Co. Ltd v Charles George t/a C.G. 8 Travers, Civil Application No. 71**

of 2001 (unreported), also case of **Mohamed Enterprises Tanzania Limited versus the Chief Harbour Master and Another, Civil Appeal No. 24 of 2015, Court of Appeal of Tanzania, at Dar Es Salaam, (unreported)**. Based on the afore stated authorities, I agree with Mr. Mrindoko that, this court has no jurisdiction to entertain the instant application owing to the Notice of Appeal existing in this court against the same decision which the intended review is sought. For that reason, I find the 1<sup>st</sup> objection to have merit and sustain it accordingly. That being the case, I will not proceed with the discussions of the remaining three objections as the findings on the 1<sup>st</sup> objection is sufficient to dispose the entire application to its finality and the application is hereby dismissed with costs.



---

**M. P. OPIYO,**  
**JUDGE**  
**11/6/2021**