

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

MISC. LAND APPLICATION NO. 379 OF 2021

SAFRONIA URIO APPELLANT

VERSUS

BRUNO ROMAN TAIRO RESPONDENT

(Arising from Extended Jurisdiction Land Appeal No. 26 of 2020 at the Magistrate Court of
Kivukoni before Hon. Tengwa, RM Ext.)

RULING

22/11/2021 and 08/12/2021

A. MSAFIRI, J

This ruling pertains to preliminary objection on point of law raised by the respondent that this Honourable Court have no jurisdiction to grant prayers sought by the applicant. The preliminary objection was raised in objection of this application which the applicant is seeking leave of this Court for extension of time to file Notice of appeal out of time.

By prayers of the parties and leave of the Court, the preliminary objection was argued by written submissions. The respondent in person, submitted in support of objection that the applicant is seeking leave for an extension of time against the judgment which was delivered by the Resident Magistrate with Extended Jurisdiction sitting at the Resident Magistrate's Court of Dar es Salaam at Kivukoni.



The respondent stated that the application is made under Section 11 (1) of the Appellate Jurisdiction Act, Cap 141 and according to the provision, the Court which have jurisdiction to extend time to the applicant to file a notice of appeal out of time is the Resident Magistrate Court with extended jurisdiction and not High Court of Tanzania. He is in opinion that the High Court has no jurisdiction to grant this prayer sought, so he prays that the application be dismissed with costs.

In reply, the applicant also in person, contested the objection and submitted that it is provided under section 47 (2) of the Land Disputes Courts Act, Cap 216 R.E 2019 that whoever is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may, with the leave of the High Court or Court of Appeal, appeal to the Court of Appeal. The applicant submitted further that, the process of initiating an appeal to the Court of Appeal starts with the issuing of the notice of appeal to be lodged by the intended appellant in the High Court as provided for under Rule 83 (1) of the Tanzania Court of Appeal Rules, 2009.

The applicant argued that the respondent did not set his eyes on the provisions of Rule 83(1) of Tanzania Court of Appeal Rules, 2009 but he relied on the provisions of Section 11 (1) of the Appellate Jurisdiction Act by arguing that the notice was supposed to be filed in Resident Magistrate Court as the one who heard the appeal was a Resident Magistrate with extended jurisdiction which is a total misinterpretation of that provision. The applicant averred that the respondent's preliminary objection is not meritorious and it should be dismissed with costs.

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Having heard the submission by both parties, the issue here is whether the preliminary objection is tenable. It is true that this application has been brought under Section 11 (1) of the Appellate Jurisdiction Act, which reads as follows;

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 time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate Court concerned....."***

The applicant is seeking for an extension of time to file notice of appeal to the Court of Appeal. The intention to appeal is arising from the applicant being aggrieved by the decision of Hon. Tengwa, Resident Magistrate with Extended Jurisdiction in Land Appeal No. 26 of 2020 at the Resident Magistrate Court of Kivukoni.

From the provision of Section 11 (1) of the Appellate Jurisdiction Act, the applicant was supposed to file this application to the subordinate Court exercising extended powers which heard the appeal and in the current matter it is a Resident Magistrate of Dar es Salaam at Kivukoni with extended jurisdiction.

This position under Section 11 (1) of the Appellate Jurisdiction Act was cemented by the Court of Appeal in the case of **Lukelo Uhahula vs. Republic**, Criminal Appeal No. 333 of 2016, CAT Mbeya (unreported)

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where in the similar circumstances, the Court found the application incompetent for being filed to the High Court instead of the Resident Magistrates court with extended jurisdiction which heard the matter.

The Court of Appeal held that;

"..... in the case at hand, as the appeal was heard and determined by the Resident Magistrate with Extended Jurisdiction, the appellant ought to have filed his application for extension of time to file the notice of appeal before the Resident Magistrate's Court exercising extended not the High Court".

The similar situation applies in the current appeal. I find that the applicant was supposed to file his application before the Resident Magistrate Court of Dar es Salaam at Kivukoni and not this Court. For the above reasons, I sustain the preliminary objection raised by the respondent and hereby struck the application without costs.

It is so ordered.



A. MSAFIRI

JUDGE

08/12/2021.