

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

MISC. LAND APPLICATION NO. 442 OF 2021

SWALAHADIN TWAHA ISMAIL.....APPLICANT

VERSUS

AMRANI MASUDI KAYUMBARESPONDENT

R U L I N G

Date of last order:08/11/2021

Date of Ruling:17/12/2021

T. N. MWENEGOHA, J:

The applicant brought this Application under the provision of Section 47 (3) of the Land Disputes Courts Act, 2019 and Section 95 of the Civil Procedure Code, Cap. 33 R. E. 2019 (Herein after the CPC), seeking for this court to certify that there is a point of law, to enable the applicant to appeal to the Court of Appeal of Tanzania against the whole judgment and decree of the High Court (Land Division) before Hon. J. A. De Mello, J. in Misc. Land Appeal No. 116 of 2017 delivered 13/09/2019, cost of this Application and any other reliefs this court may deem fit to grant.

The application is supported by the affidavit sworn by the applicant, dated 02/08/2021.

On the 07/09/2021 the respondent raised the preliminary objection that;-

1. The application is hopelessly time barred;

2. The application is incompetent as it is geared at abusing the court process.

Hearing of the preliminary objection proceeded by the way of written submission. While the appellant appeared in person and unrepresented the respondent was presented by Mr. Lutufyo Mvumbagu, Advocate.

When submitting Mr. Lutufyo abandoned the 2nd preliminary objection.

Submitting on the 1st preliminary objection, Mr. Mvumbagu submitted that, the application is hopelessly time barred. That, even though the Land Disputes Courts Act is silent concerning the specific provision stipulating the time limit for the applicant to file application for certificate on point of law, Item 21, Part III of the schedule in the Law of Limitation Act, Cap. 89 R. E. 2019 (herein after the Limitation Act) clearly specify the time limit to be 60 days effectively from the date of delivery of the decision.

He continued to submit that the Application at hand was filed on 27/08/2021 seeking for the certificates on the point of law in order to appeal to the Court of Appeal of Tanzania against the decision arising from the Misc. Land Appeal No. 116 of 2017, delivered on the 13/06/2019, that this is after more than two years.

Also, that the applicant is trying to mislead the Court that he first sought an extension of time to file this Application and it was granted. That this is not true because the applicant only filed an Application to seek leave to appeal to the Court of Appeal pursuant to Section 11 of the Appellate Jurisdiction Act, Cap. 141 R. E. 2019. That even if it was true that the applicant first sought extension of time before filing this Application, still this application has been field out of

time as the sought leave was granted on 27/08/2021 whereby he was required to file the application at hand within 30 days, but due to the reasons better known by the applicant he filed this application on the 27/08/2021 after the expiry of almost 50 days, this was without leave of the court.

Mr. Mvumbagu finalized his submission by praying this Court to dismiss the application in its entirety with costs.

In reply the applicant submitted that before filing this application firstly he filed an application for extension of time vide Misc. Land application No. 88 of 2020, within which he prayed to be allowed to file this application. That the court on the 8th July, 2021 (Hon. Maghimbi, J.) granted the application and the applicant was ordered to file this application within 30 days from the date of ruling. That before the application at hand was admitted manually on the 27th August, 2021, it was already filed online, as he filed it online on the 3rd August, 2021. He insisted that he filed this application within time, not after 50 days as submitted by the respondent.

He added that he decided to file this application without attaching the copy of the said Judgment, the Misc. Land Application No. 88 of 2020, on the reasons that the court delayed in supplying the same. That he has not been supplied with the said copies to date.

In rejoinder the respondent reiterated what he submitted in his submission in chief and added that even if the applicant alleges that he first filed his case online in the 3rd August, 2021, the document is presumed to be officially filed not on the date of filling and admission of the document online, but the date

when a document is manually presented before the court of law and necessary fees are full paid.

I have considered the submissions and records before me and the issue that I have now to determine is whether the preliminary objection has merits. It is the argument of the applicant that he is not time barred due to the fact that he was granted extension of time through Misc. Land Application No. 88 of 2019 giving him 30 days from 08/07/2021. He further argued that he filed such application online on 03/08/2021 and later he filed the same manually on 27/08/2021. It is therefore his contention that he first filed the application on 03/08/2021 and hence he is on time.

As correctly noted by the respondent, there is no proof of such online filing on 03/08/2021. Had the applicant shown proof of such online filing then the court could have considered such date as a filing date.

With lack of such proof this court is forced to consider available evidence to determine as to when the application has been filed.

It is noted that a document is properly filed in Court when it is fully paid for and an exchequer receipt has been issued. This is confirmed in the case of **John Chuwa vs. Anthony Ciza [1992] TLR ,233**, where it was held;

"...the date of filing the application is the date of the payment of the fees and not that of the receipt of the relevant documents in the registry..."

It is therefore correct to contend that the application is time barred. As from 8/07/2021 when the alleged extension of time of 30 days was given to

27/08/2021 when the application was filed is almost 50 days. Beyond 30 days granted.

In the upshot the preliminary objection is sustained. The Application is dismissed with costs.

It is so ordered.

Dated at Dar es salaam this **29th** day of **November, 2021.**




T. N. MWENEGOHA
JUDGE