

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC.LAND APPLICATION NO.197/2022

(Arising from the from Misc. Land Application No. 56 of 2022)

ALLY SHABANI AND 54 OTHERS.....APPLICANT

VERSUS

MEENAKSHI HASMUKRAY DESAI.....RESPONDENT

R U L I N G

17.08.2022 & 07.09.2022

MASOUD, J.

This is the ruling on the preliminary objections that were raised by the respondent that; the application is time barred; that, the court has no Jurisdiction; and that the application is fatally defective for not being accompanied by certified copies of the decision in Misc. Application No.56 of 2022.

During the hearing of the preliminary point of law, both parties were represented. While the respondent was represented by Shadrack Samwel, assisted by Mr. Paul Mtui, Advocates, the Applicant was represented by Ms Grace Ndera, Advocate.

On the 1st and 2nd preliminary points of law Ms Ndera submitted that, the application is brought under the provision of Section 47(1) of the Land Dispute Court Act Cap 216 R.E 2019, applying for leave to appeal to the Court of Appeal. The law governing the application for leave under the current circumstances is under rule 45 (a) of the Court of Appeal Rules, R.E 2019, which requires the applicant to file his application within 30 days from the date of the ruling to be appealed against. She submitted further that the order which the applicant intends to appeal against was delivered on the 28/3/2022 in Misc. Land Application No. 56 of 2022.

In view of the above, the period of 32 days had lapsed since the order was made. Thus, it was argued, the application is time barred and incompetent before the court. She referred the court to the case of **Said Mohamed Said vs Muharami Juma, Civil Appeal No.110/2020** (unreported) at page 12 of the typed judgment.

On the 3rd preliminary point, Ms Ndela said that the application is defective and incompetent before the court, as it is not accompanied with certified copy of the decision sought to be appealed against. She argued that rule

49 (3) of the Court of Appeal Rules requires the said copy to be attached to the Application. He referred the court to the case of **Grace Fredrick Mwakapiki vs Jackline Fredrick Mwakapiki and Others, Civil Case No.51/6 of 2021.**

In reply, Mr. Shedrack submitted that the objections are devoid of merits and prayed for the same to be dismissed. He submitted that the application was filed online on 27/04/2022. It was thus filed within time. He submitted that the applicants have the printout from the registry proving the same. He relied on rule 21(1) of the **JALA, Electronic filing Rules, G.N No. 148 of 2018, R.21(1)** which provides as follows:

"A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight EAT or the date it is submitted unless a specific time is set by the court or it is rejected."

He also referred the court to the case of **Khamis S. Abushiri vs Hamis Ally Shabani and 2 Others, Misc. Civil Application No.20 of 2021** at p.5 of the typed ruling.

As regard to the 2nd and the 3rd preliminary points, Mr. Shadrack, submitted that rule 45A which covers application for leave to the high court is clear that there is no requirement of attaching decision sought to be challenged and it also provides that, the application can be made orally. He referred the court to the case of **Allex Maganga vs. Director of Msimbazi Centre** [2004] T.L.R 212 and **Executive Society Wakf Trust Commission vs Saide Salmin Ambar** [2001] T.L.R 160

He submitted that even if there were such requirements, the position has been cured by the overriding objective principle which emphasizes on the avoidance of unnecessary technicality. He thus referred the court to Rule 4(1), and S.3A of the Civil Procedure Code, Cap 33 R.E 2019 and the case of **Yacobo Magoiga Gec] here vs Penina Yusuph Civil App No.59 of 2017.**

When rejoining, Ms Ndera reiterated what she submitted in her submission chief.

I have carefully considered the submission of the counsel of both sides. The main issue for determination is whether the preliminary points of law raised are meritorious.

As submitted by Ms Ndera, the relevant provision to move this court to grant the sought application is R.45(a) of the Court of Appeal Rules which among other things provides for time limit within which to file application for leave, that is within 30 days of the decision.

On the 1st preliminary objection Ms Ndera said that the application at hand is time barred. It was filed after the lapse of 32 days from the date the decision intended to be appealed against was entered. Hence forth, she prayed for the application to be dismissed with costs. To Mr. Shadrack, the application was filed within time on the 27/04/2022. It was filed through the online system.

It is trite law that the completion of filing is upon payment of the requisite filing fees. Before that, the filing through the system is considered to be premature for want of fulfilment of the condition precedent which is payment of filing fees. See **John Chuwa vs. Anthony Ciza** [1992] TLR

233 and **Evance Benson vs Ajane Donatila Ruambo and Another**
Misc. Land Application No. 02 of 2022

Perusing the records of the application at hand, particularly the receipts attached to the Application, I found that payments of the instant application were done on the 29th April, 2022. The record shows further that the decision intended to be appealed against was delivered on the 28th March, 2022. Thus, the application at hand was filed out of time, on the 29th April, 2022, two days after the lapse of the requisite time. No reasons were adduced as regard to the said delay. In the case of **Hassan Bushiri vs. Latifa Lukio Mashayo, Civil Application No. 3 of 2007** (unreported) the Court of Appeal held that:

"... Delay, of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

As regards to the submission by Mr. Shadrack on the application of the overriding principle, the same cannot be applied in the circumstances of the application at hand, as its application will be against the mandatory provisions of the procedural law. See **Mondorosi Village Council and**

2 Others vs. Tanzania Breweries Limited, Civil Appeal No. 66 OF 2017, CAT at Arusha. (unreported).

In the results and on the basis of the above findings, the 1st preliminary objection is meritorious, and it is herein sustained. I thus find no need of discussing the remaining preliminary points. Henceforth, the application is dismissed with costs.

It is so ordered.

Dated at Dar es Salaam this 7th September, 2022.


B.S. MASOUD.

JUDGE.

