

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 716 OF 2021**

*(Originating from Land Appeal No.271 of 2019)*

**MUHUSIN RAMADHANI SALIM ..... APPLICANT**

**VERSUS**

**HOSSEIN HAJI & ANOTHER ..... RESPONDENTS**

**RULING**

Date of last Order: 10.02.2022

Date of Ruling: 15.02.2022

**A.Z. MGEYEKWA, J**

This is a ruling on a preliminary objection, taken at the instance of the respondents, contending that the omnibus application for leave to appeal to the Court of Appeal and on certification on point of law is time-barred. The application against which the preliminary objection has been raised seeks to move the Court to grant leave which allows the applicant to institute an appeal to the Court of Appeal of Tanzania. The contention by the respondents is that this application is time-barred.

The application was made under section 47 (2) of the Land Disputes' Courts Act, Cap.216 [R.E2019]. The application is supported by an affidavit deposed by Muhusin Ramadhani Salim, the applicant. The respondent resisted the application and has demonstrated his resistance by filing a joint counter-affidavit deposed by Hossein Haji and Mstili Hosseini, the respondent. The instant application represents hit a snag. The respondents have raised a preliminary objection that this application is time-barred.

As the practice of the Court, I had to determine the preliminary objection first before going into the merits or demerits of the application. That is the practice of the Court founded upon prudence which I could not overlook.

When the matter came for court orders the applicant and respondents appeared in person, unrepresented, The 2<sup>nd</sup> respondent urged this court to argue the application by way of written submission with the Court consent, the applicant was required to file his written submission before or on 31<sup>st</sup> January, 2022, and the respondents were required to file their reply on 07<sup>th</sup> February, 2022 and rejoinder if any on 10<sup>th</sup> February, 2022.

In their terse submission, the respondents argued that this court delivered its judgment on 10<sup>th</sup> November, 2021 in regard to Land Appeal No. 271 of 2019 which the applicant has shown the intend of appealing against it. They went on to submit that the applicant has lodged his notice of appeal on 16<sup>th</sup> November, 2021, the respondents were not served with the notice of appeal within 14 days from the date of the filing in accordance with Rule 83 of the Court of Appeal Rules of 2009. He added that the applicant proceeded to file the instant application on 14<sup>th</sup> December, 2021 seeking leave of this court to appeal to the Court of Appeal of Tanzania.

The respondents contended that this application is out of time under Rule 6 of the Tanzania Court of Appeal (Amendments) Rules, 2017 which amended Rule 45 of Tanzania Court of Appeal Rules, 2009, this Rule requires the applicant to file this kind of application within 30 days from the date of judgment. They contended that the 30 days is pegged on the date of delivery of the decision sought to be appealed against. They contended that the Land Appeal No. 271 of 2019 which the applicant intends to appeal against to the Court of Appeal of Tanzania was pronounced by Hon. Msafiri, J on 10<sup>th</sup> November, 2021, and the applicant lodged the instant application on 14<sup>th</sup> December, 2021 after 35 days lapsed.

The respondents submitted that in accordance with the law is clear this application is out of time and the only remedy is to dismiss the application with costs. It was his further submission that the applicant ought to have filed an application for an extension of time to file an application out of time. He urged this court to dismiss the application for the applicant's failure to file the instant application within time. Fortifying his submission he cited the case of **Ratman v Cumaramy & Another** (1964) 3 ALL ER 933 quoted in the case of **Godwin Ndewesi & Karol Inshengoma v Tanzania Audit Cooperation** (1995) TLR 200, the Court of Appeal held that:-

*" Rules of the court must prima facie be obeyed in order to justify a court in extending the time during which the court exercises its discretion. If the laws were otherwise, any party in bread would defeat the purpose of the rules which is to provide a timetable for the conduct of litigation."*

On the strength of the above submission, the respondents urged this court to dismiss the present application with costs.

In his reply, the applicant was brief and focused. He argued that the preliminary objection is unattainable in the eyes of the law the same deserves to be dismissed. The applicant contended that the judgment

originates for the High Court, in Land Appeal No.27 of 2019 dated 10<sup>th</sup> November, 2021. It was his submission that counting the days from the date of the judgment, the last date of filing this application was 9<sup>th</sup> December, 2021 which was on the 30<sup>th</sup> day. He added that the said date was a public holiday and in accordance with sections 60 (1) (e) and 60 (2) of the Interpretation of Laws, Cap. 1 [R.E 2019], the last date to file the present application was 10<sup>th</sup> December, 2021.

The applicant continued to submit that on 10<sup>th</sup> December, 2021 the applicant successfully submitted and registered this application online through a judicial account of authorized user Advocate Christopher Singa, as shown in the printout. He went on to submit that in accordance with Rule 21 (1) of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 GN No. 148 of 2018, the document is considered to have been filed on the date submitted online. To bolster his position he referred this court to the case of **Geita Gold Mining Limited v Christian Christopher**, Labour Revision No.90 of 2020 whereas this court insisted on the need of submitting a printout of the account record as proof. The applicant stated that the day written on the application is out of the court mistake in issuing receipt since the document was submitted on 10<sup>th</sup> December, 2021. It was his submission that for the interest of justice, the applicant ought not to be punished for it.

He went on to submit that the respondents' submission that the applicant did not serve the respondents with a notice of appeal within time is premature, the time limit of filing this application is not determined from the date of service of notice but it accrued the date of judgment.

In conclusion, the applicant beckoned upon this court to dismiss the application.

Submitting in rejoinder, the respondents reiterated their contention that the application is time-barred since the same was received by this court on 14<sup>th</sup> December, 2021. They claimed the application was that the electronic filing on 10<sup>th</sup> December, 2021 was not proved. The respondents further submitted that the applicant ought to serve the alleged printout to the respondents and the Court. To buttress his position he cited the case of **Geita Gold Mining Ltd v Christian Christopher** (supra). They maintained that the application is time-barred and that the same should be dismissed with costs.

Insisting, they contended that online registration can be done at any time and at any even during public holidays. They added that at least the applicant could have raised the issue of delay due to a network problem but not a public holiday. They maintained that the application is time-barred and that the same should be dismissed with costs.

I have keenly followed the deliberation to the arguments for and against the preliminary objection herein advanced by the respondents and applicant. Having done so, the Court's unenviable duty is to determine as to ***whether the instant application is timeous.***

As unanimously held by the respondents and applicant, application for leave to file an appeal to the Court of Appeal are governed by the provisions of Rule 6 of the Tanzania Court of Appeal (Amendments) Rules, 2017 which amended Rule 45 of the Tanzania Court of Appeal Rules of 2009 which provides for the time frame within which a leave of the High Court may be made. The time frame is 30 days from the date the decision sought to be appealed against was pronounced by a court. For ease of reference, the said provision is reproduced as hereunder: -

*"In Civil matters:*

*a) Notwithstanding the provisions of rule 46 (1), where an appeal ... with the leave of the High Court application for leave may be made informally, when the decision against which it is desired to appeal given, or by Chamber Summons according to the practice of the High Court, within thirty days of the decision."* [Emphasis supplied].

In our case, 30 days are counted from 10<sup>th</sup> November, 2021, when this Court delivered the decision the applicant seeks to impugn this court

decision. It is clear that filing such an application for leave would follow the time prescription which was set in the said Rule i.e. 30 days of the decision.

The applicant's line of argument is basically that the application was lodged in this court on 10<sup>th</sup> December, 2022 which was the last date of filing the said application via electronic filing. The procedure in filing documents through electronic filing is governed by the Judicature and Application of Laws (Electronic Filing) Rules, 2018 specifically Rule 21 and 22. Rule 22 (a) provides that:-

*“ Where a document is filled with, served on delivered or otherwise conveyed to the Registrar or Magistrate in charge using the electronic filing service and is subsequently accepted by the Registrar or Magistrate in charge, it shall be deemed to be filed served, deliver or conveyed.”*

Guided by submissions of both learned counsels and court records, it is not clear whether the applicant filed the instant application through e-filing on 10<sup>th</sup> December, 2021. There is no proof that the applicant filed the present application online on 10<sup>th</sup> December, 2021. Therefore, I am not sure if the instant application was filed within time. The only evidence on record is the manual filing. Thus, I am relying on the hard copy which



is before this court, the present application was filed on 14<sup>th</sup> December, 2021. For those reasons, I fully subscribe to the respondents' Advocate submission that the application was brought before this court out of time. Taking into consideration that the appellant has not sought and obtained extension of time to file an application for leave to the Court of Appeal of Tanzania out of time, the same is certainly improper before this court.

In the upshot, I find that the preliminary objection by the respondents is meritorious and holds a sway. I hold that the application is time-barred. Accordingly, I invoke the provisions of section 3 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019] and dismiss it. Each party to shoulder his own costs.

Order accordingly.

Dated at Dar es Salaam this date 15<sup>th</sup> February, 2022.



A.Z.MGEYEKWA

**JUDGE**

15.02.2022

Ruling delivered on 15<sup>th</sup> February, 2022 via audio teleconference whereby the applicant and respondents were remotely present.



A.Z.MGEYEKWA

**JUDGE**

15.02.2022