

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

MISC. LAND CASE APPLICATION NO. 364 OF 2022
(Arising from Misc. Land Appeal No. 23 of 2022)

YUNUS JUMA KILINGANI.....APPLICANT

VERSUS

HIZA ABASI SHESHE.....RESPONDENT

R U L I N G

Date of Last Order: 18.07.2022

Date of Ruling: 29. 07.2022

T. N. MWENEGOHA, J.

The applicant sought among others, a leave to appeal to the Court of Appeal of Tanzania, against the decision of this court, given by Mgeyekwa J, vide Land Appeal No. 23 of 2022. The application was made under Section 47 (1) and (2) of the Land Disputes Courts Act, Cap 216 R. E. 2019, and accompanied by the affidavit of the applicant, Yunus Juma Kilingani.

When the respondent learned of the existence of the instant application against him, he raised a preliminary objection on point of law that, the same is time barred. Mr. Burhan Mussa, the respondent's advocate in his written submissions in favour of the objection maintained that, the application at hand offends the provisions of Rule 45 of the Court of appeal Rules as it had been filed out of 30 days prescribed time. The same was

supposed to be filed on the 5th of June 2022, counting from the date the impugned decision was delivered.

In reply, Advocate Ashura Mansoor, for the applicant maintained that the application was filed within time. That, this application was not possible to be filed without being accompanied with a copy of the impugned decision as per Rule 49 (3) of Court of Appeal Rules of 2019. That, the court has to exclude the time used by the applicant to obtain the copies of the impugned decision as per Section 19(2) of the Law of Limitation Act, R. E. 2019.

In his rejoinder, the respondent's counsel reiterated his submissions in chief and insisted that, the provisions of the Law of Limitations Act, cited by the applicant's counsel cannot apply in this case. The case at hand is governed the Court of Appeal Rules of 2009. Otherwise, if the applicant wanted to invoke the applicability of Section 19 (2) of the Law of Limitations Act, Cap 89 R. E. 2019, he could have applied for extension of time, not this case.

Having considered the arguments for and against the objection at hand, the issue for determination is whether the same has merits or not. On the face of it, the objection has merit. The applicant's counsel has admitted that the he waited for the copies of the impugned decision for the same to be accompanied with the instant application as per Rule 49 (3) of Court of Appeal Rules of 2019. That, if we exclude the time used in obtaining the said documents, we will find this application to be within time. However, these arguments are misplaced, they have their place where they can be considered but not in this case. As advised by the counsel for the respondent, the applicant was supposed to apply for extension of time if he wanted such exclusion to be dealt with. As of now, I find this application to be incompetent for being filed out of time and without a leave of the court to do so.

Eventually, the application is hereby struck out with costs.

It is so ordered.




T. N. MWENEGOHA
JUDGE
29/07/2022