

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO. 355 OF 2022**

(Arising from the District Land and Housing Tribunal for Kinondoni at
Mwananyamala in Application No. 531/2016)

GLORY MALIKI APPLICANT

VERSUS

FAILEY MICHAEL MWAKIPESILE 1ST RESPONDENT

ALLY SHANANI 2ND RESPONDENT

ABLON MKENDA 3RD RESPONDENT

BAKARI CHILALA 4TH RESPONDENT

MOHAMED H. KATUMBA 5TH RESPONDENT

RULING

Date of last Order: 25.08.2022

Date of Ruling: 26.08.2022

A.Z.MGEYEKWA, J

This ruling is in respect of an application for leave to apply for an extension of time to file an appeal out of time. The application is preferred

under the provisions of section 47 (1) of the Land Disputes Courts Act, Cap. 216 The application is supported by an affidavit deposed by Glory Maliki, the applicant. The respondents have stoutly opposed the application by filing a counter-affidavit deposed by all five respondents.

The application did not have a smooth sail, for, ahead of the hearing, it is hurdled by one point of preliminary objection lodged by the learned counsel for the respondents. The preliminary objection notice was lodged on 12th August, 2022, reads:-

That this Honourable Court has not been properly moved in respect of the application for extension of time to file leave to appeal to the Court of Appeal.

When the matter was called for hearing on 15th August, 2022 when the matter came for hearing, the applicant appeared in person and the respondents enlisted the legal service of Mr. Ally Chipaso, learned counsel. The applicant urged this court to dispose of the preliminary objection by the way of written submission whereby the respondent filed his submission in chief on 17th August, 2022. The applicant filed a reply on 24th August, 2022. The respondents' counsel waived his right to file a rejoinder.

Mr. Chipaso in his submission was focused and straight to the point. He submitted that the application is bad in law and should be struck out or dismissed since this court is not moved properly in respect of the application for extension of time to file leave to appeal to the Court of Appeal. She submitted that the application is preferred under section 47 (1) of the Land Disputes Courts Act, Cap 216 which state that:-

47.-(1) A person who is aggrieved by the decision of the High Court in the exercise of its original jurisdiction may appeal to the Court of Appeal in accordance with the provisions of the Appellate Jurisdiction Act."

Mr. Chipaso contended that the prayer in the present application are concerning an extension of time to file leave to appeal to the Court of Appeal and the cited provision is not supporting the above prayers. It was his submission that wrong citation of the enabling provision goes to the root of the application. It was his view that in cases, the applicant wanted this court to grant an extension of time to file leave to appeal to the Court of Appeal then she was supposed to cite section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 [R.E 141]. He went on to argue that wrong citation of the provision of the law is fatal. Fortifying his position he cited

the cases of **Huseein Mgonja v The Trustees of the Tanzania Episcopal Conference**, Civil Revision No. 02 of 2002 CAT (unreported), **China Henan International Cooperation Group v Salvand K. A Rwegaira** (2006) TLR 220 and the case of **Juma Mohamed Futo v Shabani Selemani**, Land Revision No. 13 of 2020 (unreported). He added that going through the cited cases, it goes without saying that the present application is wrongly brought before this court.

On the strength of the above submission, Mr. Chipaso beckoned upon this court to sustain the preliminary objection and dismiss the application with costs.

In his reply, the applicant had not much to say. He was extremely brief. He simply submitted that the application is not bad in law and the provision was properly cited to move the court to grant an extension of time to appeal out of time. He believed that this court was properly moved to determine the application for extension of time.

Having responded on the point of objection, the applicant prayed that the objection be rejected.

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

Having gone through the court records and parties' submissions, I am in a position to determine the point of law raised by the learned counsel for the respondent that the instant application is bad in law as it is brought under the wrong citation of the law. The questions that await resolution is *whether this Court has been properly been moved and, whether the application is meritorious.*

Without wasting the time of the court, I have to state from the outset that I fully subscribe to the learned counsel for the respondents' submission. Although, the applicant sees nothing wrong with the cited provision, but, it is clear that the applicant has cited a wrong provision of law which does not move this court to grant what is sought by him. The law is settled that non citation or wrong citation of the enabling provisions of the law renders the application incompetent. The applicant in his chamber summons has

cited section 47 (1) of the Land Disputes Courts Act, Cap. 216 [R.E. 2019].

For ease of reference, I reproduce the said sections hereunder:-

" 47.-(1) A person who is aggrieved by the decision of the High Court in the exercise of its original jurisdiction may appeal to the Court of Appeal in accordance with the provisions of the Appellate Jurisdiction Act."

Applying the above provisions of law, it is undoubted that the above provision of the law is related to extension of time, instead the same is in regard to an appeal to the Court of Appeal of Tanzania. Reading the applicant's chamber summons it is clear that the applicant is applying for leave to apply for extension of time to file an appeal to the Court of Appeal out of time.

Consequences of a wrong citation are a subject that has been widely covered in our jurisprudence, and there is a litany of court pronouncements that abhor the use of the wrong citation, and the ramification of all that. These include the cases of **Alice Mselle v The Consolidated Holding Corporation**, Civil Application No. 11 of 2002 CAT (unreported); **MIS Ilabila Industries Ltd. & 2 Others v Tanzania Investment Bank & Another**, Civil Application No. 159 of 2004 CAT

(unreported). In **Aloyce Mselle**, the Court of Appeal of Tanzania held that: -

"There is an unbroken chain of authorities of this Court to the effect that the wrong citation of a provision of law under which an application is made renders the application incompetent ..."

Similarly in the case of **Robert Leskar v Shibesh Abebe**, Civil Application No. 4 of 2006 the superior Bench held that:-

"It is equally settled law that non-citation of the relevant provisions in the notice of motion renders the proceedings incompetent."

The reasoning in the above excerpt followed in the footsteps of the decision in **China Henan International Cooperation Group (supra)**, the Court of Appeal of Tanzania had the following observation: -

"From these decisions, the unanimous position is that applications that suffer from the malady of the wrong citation are incompetent and are liable to striking out. The application at hand is no better. It is incompetent and untenable. Accordingly, the same is hereby struck out."

Consequently, I hold that the objection on wrong citation of the enabling provision is meritorious and I sustain it. Accordingly, I strike out the instant application with costs.

Order accordingly.

DATED at Dar es Salaam this 26th August, 2022.




A.Z.MGEYEKWA
JUDGE
26.08.2022

Ruling delivered on this 26th August, 2022 via video conferencing whereas the applicant and Mr. Chipaso, learned counsel for the respondents were remotely present.




A.Z.MGEYEKWA
JUDGE
26.08.2022