

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

MISC. LAND APPLICATION NO.586 OF 2022

(Arising from the Judgment of the High Court in Land Appeal No. 261 of 2001, Originating from the District Land and Housing Tribunal for Ilala in Land Application No. 22 of 2020)

**ALEX OBELAN CHITAWALA 1ST APPLICANT
HALFANI MVUNGI 2ND APPLICANT**

VERSUS

REHEMA BENJAMIN HAULE RESPONDENT

RULING

Date of last Order: 13.03.2023

Date of Ruling: 13.03.2023

A.Z. MGEYEKWA, J

This is an application for leave to file an appeal to the Court of the Appeal of Tanzania. The application is brought under section 5 (1) of the Appellate Jurisdiction Act, Cap 141 [R.E 2019]. The Application is with the supporting affidavit of Mr. Alex Chitawala, the applicant sworn on 27th September 2022 which he averred that the applicant is dissatisfied with

the decision of this Court hence he is applying for leave to appeal to the Court of the Appeal of Tanzania.

The Application is contested. The suit stumbled upon preliminary objections from the Defendants who raised four points of Preliminary Objection as follows:-

1. The Application is incurable defective for a wrong citation of the law,
2. The Application is time-barred.
3. The applicant did not append a copy of the impugned Judgment.

When the matter was called for hearing on 13th March 2023 the applicant enlisted the legal service of Mr. Mussa Kiobya, learned counsel and the respondent had the legal service of Frank Mbago, learned counsel.

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 suit.

In support of the first limb of objections, Mr. Kiobya contended that the application is incurable defective for a wrong citation of the law.

On the first limb of the objection, the respondent's counsel submitted that the instant application is for leave to appeal to the Court of Appeal of Tanzania. And the application is brought under section 5 (1) of the Appellate Jurisdiction Act, Cap.141 and Rule 45 (a) of the Tanzania Court of Appeal Rules. Mr. Kiobya submitted that He stated that in land matters the applicable section to move this Court is section 47 (1) of the Land

Disputes Courts Act, Cap .216. Therefore in his view, the applicant was supposed to cite section 47 (1) of the Land Disputes Courts Act, Cap.216 [R.E 2019]. He contended that since the applicant has cited irrelevant sections means this Court is improperly been moved.

Arguing on the second limb of the objection, Mr. Kiobya contended that this Application is time-barred. The learned counsel for the respondent valiantly submitted that the impugned decision was delivered on 29th August 2022 and the applicant filed the instant application on 29th September 2022. To support his submission he referred this Court to Rule 45 (a) of Court of Appeal Rules of 2009 as amended which requires an aggrieved party to lodge an appeal within 30 days. He averred that counting from the day when the impugned decision was delivered on 29th August 2022 to 29th September 2022 when the applicant lodged the instant application is a lapse of two days. Mr. Kiobya went on to submit that the remedy in filing the instant application is brought out of time is dismissal. To cement his submission he cited section 3 of the Law of Limitation Act, Cap. 89 [R.E 2019].

As to the third objection, the learned counsel for the respondent was brief. He argued that the applicant did not attach the impugned decision of this Court and attaching the same is a mandatory requirement. Therefore, it

was his view that the omission renders the application at hand incompetent.

In conclusion, the learned counsel for the respondent beckoned upon this Court to dismiss the application with costs.

Mr. Frank's rebuttal was brief. On the first limb of the objection, Mr. Frank simply argued that the applicant cited sections 5 (1) of the Appellate Jurisdiction Act Cap. 141 and Rule 45 (a) of the Tanzania Court of Appeal Rules to move this Court to grant leave to appeal to the Court of Appeal of Tanzania. He valiantly argued that citing a wrong provision of law is not fatal, the same is curable. To buttress his submission, Mr. Frank referred this Court to the case of **Chamgore Wildlife Safari Camp v the Trustees of Tanzanian National Parks**, Misc. Civil Application No. 496 of 2018 HC at DSM (unreported). The learned counsel submitted that the cited sections are proper since the matter does not originate from the High Court. He contended that in the matter at hand section 47 (1) of the Land Disputes Courts Act, Cap. 216 is inapplicable. He urged this Court to overrule this objection with costs.

As to the second limb of objection. He admitted that the application was filed on 29th September 2022 and the applicant filed the same application electronically on 27th September 2022 therefore, he believes that the

application was filed within time, hence he urged this Court to dismiss the second limb of objection.

On the last limb of the objection, the applicant's counsel conceded to the objection that the applicant has not attached the impugned Judgment.

In his brief rejoinder, the respondent's counsel reiterated his submission in chief. Stressing on the point of a wrong citation of the law, Mr. Frank insisted that the application is brought under a wrong citation of the law. The counsel for the respondent distinguished the cited case of **Changere** (supra) from the case at hand in the sense that the cited case is related to civil matters while the case at hand is concerning land matters whereas section 47 (1) of the Land Disputes Courts Act Cap. 216 [R.E 2019 is a proper provision of law in revisional and appellate jurisdiction to move this Court to grant leave to appeal against land matters originating from the District Land and Housing Tribunal.

The learned counsel for the respondent insisted that the application at hand is time-barred. Ending, he urged this Court to dismiss the application with costs.

I have given careful deliberation to the arguments for and against the preliminary objection herein advanced by both learned counsels. Having done so, it should be now opportune to determine the preliminary

objections raised by the respondent's Advocate and the main issue for determination is *whether the preliminary objections are meritorious*.

To begin with, from the factual setting, it is beyond question that having heard the respondent's Advocate's submissions on the first limb of objection the issue for determination is whether the application itself is incompetent for being brought under a wrong provision of the law.

It is noteworthy that leave to appeal to the Court of Appeal is a mandatory step to be undertaken by any party who wants to challenge decisions from this court. Section 47 (2) of the Land Disputes Court Act Cap. 216 imposes a condition that to appeal to the Court of Appeal of Tanzania, the aggrieved party must seek leave from the High Court. For ease of reference, I reproduce Section 47 (2) of the Land Disputes Court Act, hereunder:-

“47 (2) “A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may, with leave of the High Court or Court of Appeal, appeal to the Court of Appeal.”

Given the above provision of the law, it is vivid that in the instant application, the applicant in his Chamber Summons has not cited section 47 (2) of the Land Disputes Court Act Cap. 216 to move this Court to grant leave to appeal to the Court of Appeal of Tanzania. As rightly stated by

Mr. Frank since the application is related to land matters then the proper citation of the law was section 47 (2) of the Land Disputes Court Act Cap. 216 [R. E 2019]. In our jurisprudence, it is equally settled law that non-citation of the relevant law and/or provisions renders the application incompetent and hence the Court is not properly moved. In the case of **Project Manager ES-Koo International Inc. Kigoma**, Civil Application No. 22 of 2009, the Court of Appeal of Tanzania, at Tabora (unreported) held that:

“ ...It is now settled law that the wrong citation of the law, section, subsection and or paragraph of the law or non-citation will not move the Court to do what is being asked to do and accordingly the application is incompetent...”

See also the cases of **NBC v Sadrudin Meghji**, Civil Application No. 20 of 1997, and **China Henan International Co-Operation Group v Salvand K. A. Rwegasira**, Civil Reference No. 22 of 2005 (all unreported). Therefore, I am in accord with Mr. Frank that the application is wanted for the wrong citation of the law.

As to the second limb of the objection, the respondent's counsel threw his last jab by contending that the appeal is time-barred. I had to peruse the court records and find out whether the appellant lodged the instant application within time. As rightly pointed out by the counsel for the

respondent, the time limit for filing leave is prescribed under Rule 45 of the Court of Appeal Rules of 2009.

Based on the above provision of the law, an application for leave emanating from the decision of the High Court is preferable within 30 days from the date the decision was made.



It is undisputed fact that the impugned decision was delivered on 29th August 2022 and the applicant filed the instant application on 29th September 2022 a lapse of 2 days. The applicant claimed that he filed the instant application online, however, the attached document shows that the application was lodged online on 28th September 2022 whereas the applicant was already out of time. In that regard, I subscribe to the contention raised by the learned counsel for the respondent and hold that the application was filed belatedly and, therefore, incompetent. The Court of Appeal of Tanzania in **Allison Xerox Sila v Tanzania Harbours Authority**, CAT in Reference No. 14 of 1998 (unreported) held that:-

“Rules of limitation are ordained for a purpose. It does not seem just that an applicant who has no valid excuse for failure to utilize the prescribed time, but tardiness, negligence or ineptitude of counsel, should be extended extra time merely out of sympathy for his cause...”

For reasons canvassed above, I am settled that the applicant's application for leave to appeal to the Court of Appeal is time-barred. Therefore, I sustain the second objection. Consequently, on this objection alone, the Misc. Application No. 612 of 2022 is dismissed for being time-barred without costs.

Order accordingly.

Dated at Dar es Salaam this date 13th March 2023.


A.Z. MGEYEKWA
JUDGE
13.03.2023


Ruling delivered on 13th March 2023 in the presence of Mr. Mussa Kiobya learned counsel and Mr. Frank Mbago, learned counsel for the respondent.




A.Z. MGEYEKWA
JUDGE
13.03.2023