

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

MISC. LAND CASE APPLICATION NO. 142 OF 2023
(Originating from Land Application No. 639 of 2018, by Kakolaki, J.)

TWAHA WAZIRI MBWAMBOAPPLICANT

VERSUS

ABDUL LWALA.....RESPONDENT

R U L I N G

Date of Last Order: 09.05.2023

Date of Ruling: 31.05.2023

T. N. MWENEGOHA, J.

Before me is an Application for leave to appeal to the Court of Appeal of Tanzania, by the applicant here in above. The Application followed the Judgment of Hon. Kakolaki, J. given on 20th of December 2019, in Land Application No. 639 of 2018. It was brought under **Section 5(1) (c) of Appellate Jurisdiction Act, Cap 141 R. E. 2019** and was accompanied by the affidavit of the applicant, Twaha Waziri Mbwambo.

The Respondent on the other hand, through the services of Advocate Irene Nambuo, raised a preliminary objection on point of law that, the Application is time barred. In her written submissions in support of the objection, Advocate Nambuo insisted that, the instant Application was supposed to be filed within 30 days as per **Section 45(a) of the Tanzania Court of Appeal Rules of 2019**. The current Application was filed after the expiry of 1183 days and without of any leave of the Court, hence it should be dismissed as decided in **Johnson Amir Garuma**

versus The Attorney General & 2 Others, Misc. Civil Cause No. 11 of 2017.

In reply, Advocate Abdul Lalwa for the applicant conceded to the objection and prayed for the case to be struck out as the same is incompetent for being barred by time.

As on the part of this Court and in consideration that the Advocate for the applicant conceded to the objection, I find no need of wasting much of this Court's time by going through the arguments of the parties, hence I allow the objection.

As to the prayer of the applicant that this Case be struck out, it is established principle of the law that the consequence of filing a matter that is time barred is to dismiss the same. In the case of Case of **Barclays Bank Tanzania Limited vs. Phylisiah Hussein Mcheni, Civil Appeal No. 19 of 2016 (2021) TZCA 202** the Court of Appeal emphasized on the application of **Section 3 (1) of the Law of Limitation Act** and established that the consequences of instituting proceedings out of time without leave of the Court is dismissal.

The Court of Appeal in the said case expressed that *"It is our conclusion that the learned High court Judge should have resorted to Section 3(1) of the Act to dismiss the complaint instead of sticking it out as she did"*.

Consequently, this Application is hereby dismissed. No order as to costs.

It is so ordered.


T. N. MWENEGOHA

JUDGE

31/05/2023

