

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

MISC. LAND CASE APPLICATION NO. 746 OF 2022
(Originating from Land Revision No.42 of 2022, by Msafiri, J.)

TERESPHORY MUGANYIZI ANTHONY.....APPLICANT

VERSUS

MERCHADES OSWARD KALEMELA.....RESPONDENT

R U L I N G

Date of Last Order: 03.05.2023

Date of Ruling: 22.05.2023

T. N. MWENEGOHA, J.

The instant Ruling is in respect of two points of preliminary objections, raised by the respondent against the Application at hand. He contended that; the same is time barred and has incomplete citation.

The application against which the preliminary objections have been raised, seeks to move this Court, to grant a Certificate on point of law, for the applicant to lodge an appeal to the Court of Appeal of Tanzania, against the decision of Hon. Msafiri, J. vide Land Revision No. 42 of 2022. The said decision was delivered on 20th October, 2022.

The preliminary objections were disposed by way of written submissions. The respondent appeared in person, while the applicant enjoyed the legal services of Advocate Robert R. Rutaihwa.

In his arguments in favour of the first objection, the respondent was of the view that, this Application is against the provisions of Rule 45(a) of the Court of Appeal Rules, G. N. No. 362 of 2017, where the same requires that Application of this nature to reach the Court within 30 days after the delivery of the impugned decision. That, this Application was filed after the expiry of 30 days hence the same is time bared.

On the 2nd objection it was argued that, the Application should fail for incomplete citation. That, the applicant was required to cite Section 5(2) of the Appellate Jurisdiction Act, Cap 14, R. E. 2019, section 47(1) and (3) of the Land Disputes Court Act Cap 216, R. E. 2019, Rule 45(a) and Rule 46(1) of the Court of Appeal Rules.

In reply, the applicant's counsel maintained that, the Application was filed within time, therefore, the 1st objection is devoid of merits. He went on to argue on the 2nd objection that, incomplete citation of a law or provision of law cannot vitiate the Application, therefore the 2nd objection also should be rejected.

Having heard the submissions of parties for and against the objections at hand, the issue for determination is whether the said objections have merits.

In my view and without taking much of this Court's time, I find both objections to be lacking merits. My reasons are as given hereunder.

Starting with the 1st objection that, the Application time barred. That, it ought to have been filed within 30 days from the date of delivery of the impugned decision of Hon. Msafiri, J. It has come to my knowledge that, this argument by the respondent is unfounded. Actually, there is no express provision of law, setting a time limit within which an Application

for Certificate on Point of Law can be lodged. However, the position is now settled that, the provisions of the Law of Limitations Act, Cap 89 R. E. 2019 are applicable, in particular item 21 of part iii of the Schedule to the Act, provides that:

"Application under the Civil Procedure Code, the Magistrates' Courts Act or other written law for which no period of limitation is provided in this Act or any other written law time limitation will be sixty days".

This position was taken in a number of cases, including the case of **Omari Rwechungura Kakweke versus Evarist Magoti, High Court of Tanzania at Mwanza, Misc. Land Application NO. 1 OF 2022**, and the case of **Bank of Tanzania versus Said A. Marinda & 30 Others, Civil Reference No. 3 of 2014, Court of Appeal of Tanzania at Dar es Salaam**. For this reason, I overrule the 1st objection.

As for the second objection, I am in line with the counsel for the applicant. It is not known what exactly the said objection needs. May be, the applicant intended to bring into this Court's attention that the Application contains incomplete citations or otherwise. As I said, I failed to grasp, what exactly the 2nd objection was about, hence, I'm left with only one option, to overrule it accordingly.

Having overruled both objections, I order the main Application to proceed until its final determination. No order as to costs.

It is so ordered.




T. N. MWENEGOHA
JUDGE
22/05/2023

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