

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 105 OF 2023

*(Arising from Misc. Land Application No. 510 of 2023 delivered on 3rd/2/2023 by
Hon. K.D. Mhina, J.)*

PELAGIA BUBERWAAPPLICANT

VERSUS

GODFREY BUBERWARESPONDENT

RULING

19th & 30th June, 2023

L. HEMED, J.

The applicant herein, instituted this application under section 5(1) of the Appellate Jurisdiction Act, [Cap 141 R.E 2019]; Rules 45(a) and 47 of the Court of Appeal Rules of 2009, seeking for leave to appeal against the decision of this Court delivered on the 3/02/2023 in respect of Misc. Land Application No. 381 of 2021. The Application was supported by the affidavit deposed by one **AMANIEL RWOGOSHORA BUBELWA** legal Attorney of the Applicant.

The Respondent contested the application by filing a notice of preliminary objection on 22nd March 2023. The notice consisted of three

(3) points of law, thus:-

"1. That under the courts lacks jurisdiction to entertain this application

2. That the applicant has invoked a wrong process not provided by law or barred by law.

3. That the application is time barred."

Mr. Desdery Ndibalema, learned advocate, represented the applicant while the respondent enjoyed the service of **Mr. Amir Mshana**, learned advocate. On 05th May, 2023 the court ordered the preliminary objection to be argued by way of written submissions. The respondent was ordered to file his submissions by 19th May, 2023, the applicant's reply submission was to be filed by 9th June, 2023 and rejoinder if any from the respondent's counsel was to be filed on or before 16th June, 2023.

The respondent filed his submissions in chief as per the orders of the court. However, the applicant never complied with the orders. It is no wonder that on 19th June 2023, when the matter was called for purposes of fixing ruling date, it was reported by Mr. **Amir Mshana**, learned Advocate, who was holding brief of **Mr. Ndibalema** for the

applicant that, the learned counsel for the applicant could not file his written submissions because he was in honeymoon. The court could not extend time because there was no good cause shown for failure to comply with the orders. The court proceeded to fix ruling date based on the available submissions.

In arguing the preliminary objection, Mr. Mshana combined all limb of objection. He asserted that the applicant had previously lodged Misc. Land Application No.105 of 2023 seeking this Court to grant leave to Appeal against the decision of this Court in respect of Misc. Land Application No.381 of 2021 which was delivered on 3/02/2023, K.D. Mhina J. He stated that Hon. Mhina J. has never decided Miscellaneous Land Application No. 381 of 2021 against which leave is sought to appeal. He was of the view that this application seeks for remedy against a non-existent injury.

According to Mr. Mshana, the last decision delivered by Hon. Mhina J, was in Miscellaneous Land Application No. 510 of 2022 delivered on 03/2/2023. He asserted further that the applicant has not attached to this application the ruling in order to satisfy the court and the respondent for what exactly the application is made.

It was submitted further by counsel for the respondent that, in

case this application is made for leave to appeal against the decision in Miscellaneous Land Application No.510 of 2022 refusing leave, then this is a wrong process and the court has no jurisdiction to entertain the application. He averred that, the law does not provide for appeal against a decision refusing extension of time to apply for leave or issuing notice of appeal. It only provides for a second bite to the Court of Appeal, as provided under rule 45A of the Court of Appeal Rules, 2009 R.E 2019. To bolster his argument, the counsel for the respondent referred to the case of **Allied One Tobacco Tanzania Limited and Another v. Mwajuma Hamisi and Another**, Civil Application No. 196/2021 and prayed for the application to be struck out.

Having gone through the affidavit and submissions made by the counsel for the applicant, I find it apt to start with the point on jurisdiction of this court to entertain the matter. The instantaneous application has been brought following the dismissal of Application No. 510 of 2022 that was before Hon. Mhina, J. The said application was for extension of time to lodge an application for leave to appeal to the Court of Appeal against the decision of this Court, Hon. Mwenegoha, J, in Land Appeal No. 238 of 2020.

I managed to access the record of Misc. Application No. 510 of

2022 and found that it was an application for extension of time to file application for leave to appeal to the Court of Appeal of Tanzania against the decision of this court in Appeal No.238 of 2020. I also realized that my brother **Hon. Mhina, J.** dismissed it *vide* the ruling delivered on 03/2/2023 on the reason that, the applicant failed to demonstrate good cause to persuade this court to exercise its discretion in granting extension of time. The applicant's purpose of filing this application is for this court to grant her leave so that she can appeal to the Court of Appeal against the decision of this Court, **Hon. Mhina, J.** refusing to grant extension of time to file application for leave to appeal to the Court of Appeal. The question is whether the Ruling of this Court, Hon. Mhina, J. refusing to grant extension of time to apply for leave to appeal to the Court of Appeal of Tanzania is appealable?

To answer the aforesaid question I had to go through the provisions in the Court of Appeal Rules, 2009. Actually, I came across with Rule 45A(1)(a) & (b) of the Court of Appeal Rules, 2009, which provides thus;

"45A.-(1) Where an application for extension of time to:-

(a) lodge a notice of appeal;

(b) apply for leave to appeal; or

(c) apply for a certificate on a point of law,

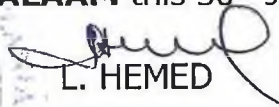
is refused by the High Court, the applicant may within fourteen days of such decision apply to the Court for extension of time."(Emphasis supplied)

According to the above cited Rule, where the application for extension of time for leave to appeal is refused, the remedy is not to appeal against such decision, rather, the aggrieved party has the option of applying for the second bite to the Court of Appeal of Tanzania. However, such application for the second bite has to be filed in the Court of Appeal of Tanzania within 14 days from the day of ruling refusing extension of time.

From the above provision of the law, it is with no doubts that the application before this court is improper and untenable. I am thus at one with the learned counsel for the respondent that this court has no jurisdiction to entertain this application. The fact that the first limb of preliminary objection has merits, I find no need of canvassing the remaining points of preliminary objection. In the upshot, I proceed to dismiss the entire application with costs. It is so ordered.

DATED at **DAR ES SALAAM** this 30th June 2023.




L. HEMED
JUDGE