

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

MISC. LAND CASE APPLICATION NO.424 OF 2023
(Originating from Land Appeal No.191 of 2022)

HAROUB M. SHAMIS.....1ST APPLICANT
RUKIA K AHMED.....2ND APPLICANT
NASORO MOHAMED.....3RD APPLICANT

VERSUS

OMARY RUBASA.....RESPONDENT

EX-PARTE RULING

Date of Last Order: 25.09.2023

Date of Ruling: 19.10.2023

T. N. MWENEGOHA, J.

The applicant is seeking for a leave to appeal to the Court of Appeal of Tanzania, against the whole decision of this Court, given by Hon. E. Rwehumbiza, PRM with extended jurisdiction, vide Misc. Land Appeal No. 191 of 2022.

The Application was made under **Section 47(2) of the Land Disputes Courts Act, Cap 216 R. E. 2019** and **Section 5(1)(c) of the Appellate Jurisdiction Act, Cap 141 R. E. 2019**. It was accompanied by the affidavit of the applicants' Advocate, Ms. Pendo Charles.

The respondent on the other hand, resisted the tenability of Application. He raised a preliminary objection on point of law, that the Application is time barred. In his written submissions, Mr. Omary Rubasa, who appeared in person, maintained that, the Application was filed in contravention of **Rule 45(a)(1) of the Court of Appeal Rules of 2019**. That, the applicants were supposed to file their Application for leave within 30 days from the date of delivery of the impugned Decision, that is on the 19th May, 2023. That, the instant Application was filed on the 19th June, 2023, two days after the expiry of 30 days. Therefore, this Application should be dismissed under **Section 3 of the Law of Limitations Act, Cap 89 R. E. 2019**.

The applicants, insisted that, the law is clear that, when the last day is a Public Holiday, Sunday or Saturday, those days are excluded in computing the day from the date when the impugned Judgment was delivered. In this case, 30 days falls on the 17th June, 2023, which was Saturday. Hence under **Section 19(6) of the Law of Limitations Act, Cap 89 R. E. 2019**, read together with **Sections 60 (1) and (2) of the Interpretation of Laws Act, Cap 1 R. E. 2019**, the said day has to be excluded. Hence the Application was filed within time.

In his rejoinder, the respondent maintained that, the exclusion of the time falling within Public Holidays and weekends is not automatic. The applicant was supposed to seek leave of this Court before filling the instant Application.

Having gone through the arguments of both parties, I now have to determine the merit of the case. I will start by highlighting **Rule 45 (a) of the Court of Appeal Rules, of 2009**, which reads as follows:-

"Where an appeal lies with the leave of the High Court, application for leave may be made informally, when the decision against which it is desired to appeal is given, or by chamber summons according to the practice of the High Court, within 30 days of the decision."

Going back to the present Application, the decision upon which leave is being sought was delivered on the 19th May 2023. This Application was filed on the 19th June, 2023. That is to say, the Application came a day after the expiry of the period given for applying for leave. The applicants wish for this Court to exclude Saturday and Sunday in accordance to **Section 19(6) of the Law of Limitations Act, Cap. 89 R. E. 2019** read together with **Section 60(1) and (2) of the interpretation of Laws Act, Cap. 1 R. E. 2019.**

At this juncture, I agree with respondent's arguments that the exclusion is not automatic. Leave of this Court must be sought for the applicant to enjoy such exclusion, as given under the law cited above. I hereby highlight the case of **Valerie McGivem vs. Salim Farkrudin Balal, Civil Appeal No. 386 of 2019, Court of Appeal, at Tanga.**

For this reason, I find the objection to have merits and sustain it accordingly.

The Application is dismissed with costs.

It is so ordered.




T. N. MWENEGOHA

JUDGE

19/10/2023

