

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

MISC CIVIL APPLICATION NO. 243 OF 2016

(Arising from High Court Land Case No. 29 of 2015)

ASHEELI TOTOS KIVUYO.....1ST APPLICANT
ABREY JOEL SOLOMON KIVUYO.....2ND APPLICANT
GODFREY HERMAN SOLOMONI KIVUY.....3RD APPLICANT BOAZ
ZEFANIA SOLOMONI KIVUYO.....4TH APPLICANT JOHN JOEL
SOLOMONI KIVUYO.....5TH APPLICANT ELIHURUMA
HERMAN SOLOMON KIVUYO.....6TH APPLICANT NETON ISRAEL
KIVUYO.....7TH APPLICANT

VERSUS

EMANUEL SOLOMONI KIVUYOS.....RESPONDENT

R U L I N G

BEFORE: MAIGE, J

In this application, the applicants are being represented by Mr. Mosses Mahuna, learned advocate and the respondent Miss. Mariam Saad,

learned advocate. In pursuit of the Court order, they have filed written submissions for and against the application. I have appropriately considered the same.

In the amended chamber summons supported by the affidavit of Mr. Moses Mahuna, learned advocate, the applicants seek for an order extending time within which to apply for leave to appeal to the Court of Appeal against the decision of my sister Madame judge Moshi dated 25th November 2016 in Land Case No. 29 of 2015. The application was initially filed on 27th December 2016. It was within 32 days from the date of the decision. The law as it stood by then was such that the application was to be filed within 14 days from the date of the decision and it was to be preceded by a notice of appeal. The applicants, it is common ground, filed a notice of intention to appeal to the Court of Appeal on 20th day of November 2016. It was well within time.

The position of law as it stands today is as stated by Mr. Mahuna in his written submissions for the applicants. The provision of section 47 (1)

of the Land Disputes Courts Act, 2002 has been amended by Act No. 8 of 2018 so that the leave requirement does not apply to the decisions of the High Court in exercise of the original jurisdiction.

By the reason of the amendment, Mr. Mahuna has submitted, in the first place that, the instant application has been overtaken by events and ought to be struck out. His contention is based on the presumption and presupposition that the rule under section 47 (1) of the LCDA is merely procedural and thus the amendment thereof would operate retrospectively. He placed reliance on the case of **BENBROS MOTORS TANGANYIKA LTD VS. PATEL** (1968) E.A.247 in support of the view that an amendment on procedural rule operates retrospectively. Miss Mariam did not make any remark on this point. Whether section 47(1) of the **LCDA** provides for a conditional right to appeal or a mere procedure thereto is a question which is within the domain of the Court of Appeal itself. If the counsel for the applicants was certain that his intended appeal did not require leave, he would pray for withdrawal of the application rather than inviting the Court to make a finding thereto. I cannot get into such a trap. I henceforth

decline from determining whether the intended appeal is covered by the old law or the current one.

Having remarked as such, it is appropriate to consider the substance of the application. As said above, the reason for the lateness of the applicants to lodge the application was the fact that they were awaiting to be availed with copies of judgment and proceedings, the subject of the intended appeal. The letter requesting for copies of the same has been referred in paragraph 4 of the affidavit and exhibited as **K-2**. It indicates to have been written and communicated to the Court on 20th December 2016. It was hardly 25 days from the date of the decision. The time limit for filing an application for leave in that particular moment in time being 14 days from the date of the decision, Miss Mariam, learned advocate is quite correct in his written submissions that the request for the same was made out of time. Therefore, even if it was to be assumed, for the sake of argument that, a copy of judgment was necessary for preparation of the application, for the reason of the same being sought out of time, it cannot

be said the lateness in lodging the application was on account of the delay to procure a copy of the judgment.

It is for the above reason that I find this application without merit. It is accordingly dismissed with costs. It is so ordered.


I. MAIGE
JUDGE
22/11/2018 

Date: 22/11/2018

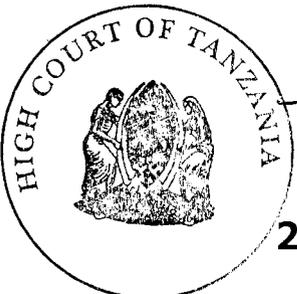
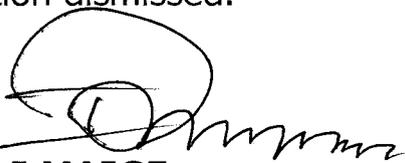
Coram: Hon. Maige, J

Applicants: Mariam Saad, advocate for Mosses Mahuna, advocate

Respondent: Mariam Saad, advocate

B/C: Mariam

Court: Ruling delivered application dismissed.



I. MAIGE,
JUDGE
22/11/2018 