

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA**

MISC. LAND APPLICATION NO. 77 OF 2020

(From The High Court of Tanzania Mbeya District Registry in Misc. Land Application No. 41 of 2017. From Land Appeal No. 37 of 2015. Originating from the District Land and Housing Tribunal for Rungwe at Tukuyu in Land Application No. 29 of 2012.)

UCHAGUZI GRAYSON MWAKABANA.....1ST APPLICANT
ASAJANYE MWAMBONE.....2ND APPLICANT
AUGUSTINO NTEPA.....3RD APPLICANT
THE REGISTERED TRUSTEES OF THE REVIVAL
AND HEALING MINISTRY ASSEMBLIES OF GOD (T).....4TH APPLICANT

VERSUS

THE REGISTERED TRUSTEES OF THE REDEEMED
ASSEMBLIES OF GOD IN TANZANIA (RAGT).....RESPONDENT

RULING

Date of Last Order: 01/10/2020
Date of Ruling : 25/11/2020

MONGELLA, J.

The applicants herein filed this application seeking to be granted leave to appeal to the Court of Appeal against the decision of this Court in Land Application No. 41 of 2017 delivered on 05th June 2018. The application is




made under section 47 (2) of the Land Disputes Courts Act, Cap 216 R.E. 2019. It is supported by the joint affidavit of the 1st, 2nd and 3rd applicants. The applicants appeared in person while on the other hand the respondent enjoyed legal services of Mr. James Berdon Kyando, learned advocate. Before the hearing of the application could take place, the respondent through his counsel raised a preliminary objection to wit, *"the application is defective and incompetent for contravening the provision of section 47 (2) of the Land Disputes Courts Act, as amended by section 9 of the Written Laws (Miscellaneous Amendments) Act No. 8 of 2018."* This ruling is therefore in respect of the preliminary objection. The same was argued by written submissions.

In his submission, Mr. Kyando contended that following the amendment made to section 47 of the Land Disputes Courts Act, Cap 216 by section 9 of the Written Laws (Miscellaneous Amendments) Act No. 8 of 2018, the applicants' application becomes defective. He quoted the particular provision which states:

"A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may with leave of the High Court or Court of Appeal, appeal to the Court of Appeal"

In consideration of the above provision Mr. Kyando argued that the questions to be asked are, first, whether Misc. Land Application No. 41 of 2017 to which the intended appeal lies was revisional, appellate or otherwise; and second, whether the applicants need the leave of this Court to appeal to the Court of Appeal against the decision of this Court



dismissing an application for extension of time to appeal against the decision of the District Land and Housing Tribunal.

Discussing the first question, Mr. Kyando argued that going by the records, the impugned ruling of this Court was about leave for enlargement of time within which the applicant could lodge the appeal before this Court. He contended that the appellate jurisdiction of the court commences when the respective appeal is filed and not when a party approaches the court to present his appeal. To cement his argument, he referred to a decision of this Court (Utamwa, J.) in the case of **Bashir Ally v. Anyegile Andendekisye Mwamaluha & 2 Others**, Misc. Land Application No. 92 of 2019 (HC at Mbeya, unreported) in which it was held:

"...the term appellate jurisdiction as used under section 47 (2) of Cap 216 does not include the powers of this court in entertaining applications for extension of time for appealing to this court from decisions of a DLHT."

Considering the above authority, Mr. Kyando argued that since in Misc. Land Application No. 41 of 2017, this court was not exercising its revisional or appellate jurisdiction, then the instant application does not fit into the provisions of section 47 (2) of Cap 216. He added that the applicant in fact does not need leave of this court to appeal to the Court of Appeal against the decision made by this court in its original jurisdiction. He also referred the court to the case of **Lala Wino v. Karatu District Council**, Civil Application No. 132/02 of 2018 (CAT at Arusha, unreported). He concluded that the applicants' application is misconceived and deserves to be struck out with costs.



In reply, the applicants started by giving brief history of the matter. They submitted that their case started in the Land Tribunal whereby they were not satisfied by its decision. Thereafter, they filed an appeal in this court within time, that is, Land Case Appeal No. 37 of 2015, However, the said appeal was struck out for being narrative and argumentative. Being out of time to re-file the appeal they filed an application for extension of time to file an appeal in this Court, that is, Misc. Land Application No. 41 of 2017. The appeal was held by Ngwala, J. (as she then was) who dismissed the same for lack of sufficient cause. Aggrieved by that decision, they filed Misc. Land Application No. 38 of 2018 in this court seeking for leave to appeal to the Court of Appeal. The application succumbed to a preliminary objection on the ground that it was made under a wrong provision of the law and was struck out accordingly. They therefore filed an application for extension of time to file application for leave to appeal to the court of appeal which was granted, hence the application at hand.

Given this sequence of events, the applicants were firm that their application for leave to appeal to the Court of Appeal is well within the ambits of section 47 (2) of Cap 216, R.E. 2019. They argued that this court was seized with appellate jurisdiction when it dealt with Misc. Land Application No. 41 of 2017 as the application for extension of time concerned a decision of the Land Tribunal. In what I find so misconceived, they distinguished the case of **Bashir Ally** (supra) cited by the respondent's counsel on the ground that the circumstances are different. They argued that in that case the applicant sought for extension of time to file an appeal to this court for the first time and when refused he

wanted to go to the Court of Appeal to challenge the refusal. He said that in the case at hand they first filed an appeal within time. After it was struck out they applied for extension as they had a valid reason, to wit, technical delay. It is their view that under the circumstances, leave to appeal to the Court of Appeal is needed.

I have accorded the arguments of both parties due consideration. It is not in dispute that the applicants are seeking for leave to appeal to the Court of Appeal against a decision of this Court in Misc. Land Application No. 41 of 2017. This is evidenced by the first prayer in the chamber summons stating that:

"Leave be granted to the applicant to appeal to the Court of Appeal of Tanzania against the Ruling and orders given on 05.06.2018 in Misc. Land Application No. 41/2017 of the High Court of Tanzania at Mbeya."

It is also not in dispute that in Misc. Land Application No. 41 of 2017, the applicants sought for extension of time within which to file an appeal against the decision of the Land Tribunal. The application at hand is made under section 47 (2) of the Land Disputes Courts Act, Cap 216 R.E. 2019 which provides:

*"A person who is aggrieved by the decision of the High Court **in the exercise of its revisional or appellate jurisdiction** may with leave of the High Court or Court of Appeal, appeal to the Court of Appeal"* [Emphasis is mine].

As discerned from the arguments of both parties, the contention is on whether this court, while dealing with the application for extension of time

in Misc. Land Application No. 41 of 2017, to which leave to the Court of Appeal is sought by the applicants, was in exercise of its revisional or appellate jurisdiction. I in fact agree with the position in **Bushiri Ally** (supra) that in entertaining an application for extension of time to file an appeal/revision against a decision of a lower court/tribunal, the court is not in exercise of its appellate or revisional jurisdiction.

I in fact once dealt with a similar issue in the case of **Anna John Mwambinga v. Bahati John Mwambinga**, Probate Appeal No. 08 of 2020 (HC at Mbeya, unreported). In this case my stance was similar to that on **Bushiri Ally** (supra) to the effect that in an application for extension of time to file appeal or revision, the court sits in its original jurisdiction. The court can only be taken to be in exercise of its revisional or appellate jurisdiction when it deals with an appeal or revision filed in court. An application for extension of time is not in itself an appeal or revision.

I find the arguments by the applicants that since the first appeal was filed within time and they have a valid reason for extension of time thus necessitating leave of this court to be totally misconceived. When an appeal is struck out, it is as good as there is no appeal filed in court. In the application for extension of time, the court sat in its original jurisdiction.

The amendment to section 47 (2) of Cap 216 brought by section 9 of the Written Laws (Miscellaneous Amendments) Act No. 8 of 2018 removed the requirement of seeking leave to appeal when the High Court dealt with the matter in its original jurisdiction. In my view, the application for extension of time to file an application for leave to appeal to the Court of

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Appeal that was granted to the applicants was superfluous. Instead they ought to have applied for extension of time to appeal to the Court of Appeal out of time and after obtaining the extension they should have directly lodged their appeal in the Court of Appeal without wasting time seeking for leave as they did in this application.

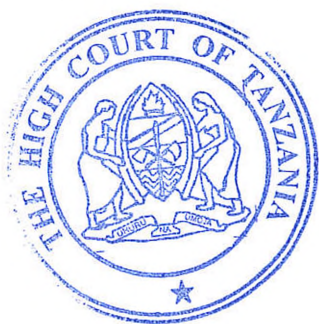
Under the circumstances, I agree with respondent that the applicants' application is misconceived. I thus sustain the preliminary objection and dismiss the application. No orders as to costs.

Dated at Mbeya on this 25th day of November 2020.


L. M. MONGELLA

JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 25th day of November 2020 in the presence of the 1st applicant and Mr. Jackson Ngonyani, learned advocate, holding brief for Mr. James Kyando, advocate for the respondent.




L. M. MONGELLA

JUDGE