

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**TANGA DISTRICT REGISTRY**

**AT TANGA**

**MISCELLANEOUS LAND CASE APPLICATION NO. 29 OF 2019**

**1. RASHIDI KASEYU**  
**2. SELEMANI KASEYE**  
**3. AYUBU AMIRI**  
**4. MOHAMED IDDI .....**APPLICANTS

**VERSUS**

**ALLY SUDI MASIMBA ..... RESPONDENT**

**RULING**

**MRUMA,J.**

The Applicants Rashidi Kayeyu and his three colleagues through the service of Mr. Philemon Laurencio, Advocate of Divine Chambers Advocates instituted an application for extension of time within which they can file an appeal to this court against the Decision of the District Land and Housing Tribunal for Korogwe District in Land Application No. 145 of 2018. The impugned decision was handed down on 22<sup>nd</sup> May 2019 and this application was presented for filing on 18<sup>th</sup> July 2019 which is 57 days from the date the said Judgment was delivered.

The application is brought under section 14(1) of the Law of Limitation Act [Cap. 89 R.E. 2019] and as is the practice the application is supported by the Applicant's affidavit.

When the Respondent was served they raised notice preliminary objection containing two points namely that:

1. That the Applicant has cited wrong provision of the law, to wit section 14(1) of the Law of Limitation Act instead of section 38 (1) of the Land Disputes Courts Act [Cap. 216 R.E. 2019].
2. That the Application is incurably defective as the Applicant has not endorsed the affidavit instead he has only verified it.

Submitting in support of the 1<sup>st</sup> Preliminary objection, the Respondent who is not represented contended that for the Court to grant an extension of time to allow an applicant to file an appeal originating from the District Land and Housing Tribunal, the Applicant must cite section 38(1) of the Land Disputes Courts Act [Cap. 216 R.E. 2019] and not section 14(1) of the Law of Limitation Act as the Applicant did in this case. Responding to the submissions by the Respondent, counsel for the Applicant submitted that because section 14 (1) of the Law of Limitation Act [Cap. 89 R.E. 2019] gives this court jurisdiction to extend time, it is incorrect to argue that this application is entirely incompetent. The learned counsel submitted that with the introduction of the overriding objective in our procedural laws through the written Laws Miscellaneous Amendments

(No.3) Act, 2018 (Act No.8 of 2018, which requires courts to dispense substantive justice without much regards to technicalities which may hinder dispensation of real justice, this court should invoke section 14(1) of the Law of Limitation Act, to extend time though it is a general provision.

It is trite law that rules of procedure are the handmaids of justice. They are the tools and means through which justice is reached. They should, therefore ordinarily be used as Mandatory as they subservient to and aid of justice. Only interpretations that may elude or frustrate the recipient of justice should be avoided. That notwithstanding, the principle of overriding objective should not be overstretched. Where there is no reason why the applicable rule of law should be dispensed with, rules of procedure should be strictly adhered to.

In the case at hand the matter originated from the Ward Tribunal. The Law that governs matters originating from the Ward Tribunals to this Court is the Land Disputes courts Act. Section 38 (1) of that law provides as follows:

*'38(1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court:*




*Provided that the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired'*

The above quoted section is a specific provision of the law which governs appeals from the District Land and Housing Tribunal to the High Court. The applicant ought to have cited that provision in this application. Citing section 14(1) of the Law of Limitation Act, which is the provision of general application applicable mainly where there is no specific provision to cater for the situation amounts to wrong citation which renders the application incompetent. Allowing a plea of overriding objective principle in a situation like this is to overstretch its application and this may open Pandora box for litigants and parties in general to relax the rules of procedure which are hand maiden of justice. Thus, an application which ought to have been brought under a specific provision of the Land Disputes Courts Act [Cap 216 R.E. 2019] but which has been brought under general provision under the law of Limitation Act [CAP. 89 R.E. 2019] is defective and cannot be saved by the overriding object principle.

That said, I struck out Miscellaneous Land Application No.29 of 2019. The Respondent will have his costs.



  
**A.R. MRUMA**  
**JUDGE**  
**25/09/2020**



A.R. Mruma

Judge

**Dated at TANGA this 25<sup>th</sup> day of September, 2020**