

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

MISCELLANEOUS LAND APPLICATION NO. 356 OF 2015

**THE COMMISSIONER FOR LANDS1ST APPLICANT
THE HONOURABLE ATTORNEY GENERAL.....2ND APPLICANT**

VERSUS

**THE REGISTERED TRUSTEES OF THE EVANGELISTIC
ASSEMBLIES OF GOD.....1ST RESPONDENT
THE ADMINISTRATOR OF THE ESTATE OF MTUMWA
SELEMANI (HAWA MTUMWA SELEMANI).....2ND RESPONDENT**

RULING

Date of last order: 07/06/2018

Date of Ruling: 10/07/2018

Makuru, J.:

Before me is an application made under section 47(1) of the Land Dispute Courts Act No 2 of 2002, section 5(1)(a) and (c) of the Appellate Jurisdiction Act Cap 141 (RE 2002), Rules 45(a), 46(1), and 49(3) of the Tanzania Court of Appeal Rules of 2009, section 95 of the Civil [Procedure Code Cap 33 RE 2002 and section 2(1) and (3) of the Judicature and Application of Laws Act Cap 358 RE 2002. The Applicant is seeking for leave to appeal to the Court of Appeal of Tanzania.

However, the Respondent has attacked the application by raising in her counter affidavit a preliminary objection on a point of law that:

“The application is incompetent for not being supported by the decree which the Applicant is intending to appeal against.”

When the matter was called on for hearing of the preliminary objection Ms. Mgeni learned State Attorney represented the Applicant while Mrs. Rwechungura learned counsel appeared for the Respondent.

Arguing in support of the preliminary objection Mrs. Rwechungura submitted that, the application before this court is contrary to Rule 49(1) & (3) of the Court of Appeal Rules, 2009. According to her, the application is not supported by a copy of the decision which the Applicant intends to appeal against. Hence, it is incompetent before the court.

In reply thereto Ms. Mgeni admitted that, copies of judgment and decree were not attached. She went further to state that the reason for so doing is that, the said copies were not furnished to them in time despite writing a letter to the court. The learned State Attorney went on to contend that, waiting for the said copies would result in filing the application out of time. In support of her contention Ms. Mgeni cited the case of **Alex Maganga Vs. Director Msimbazi Center**, CAT Civil Application No. 81 of 2001 (Dar es Salaam, unreported).

In rejoinder Mrs Rwechungura submitted that, section 19(2) of the Law of Limitation Act excludes the time spent for securing copies of judgment and decree. Thus, there was no need for the Applicant to rush.

In determining this preliminary objection I am of the considered opinion that it is appropriate to first know whether it is a mandatory requirement to

attach the copies of judgment and decree in an application for leave to appeal to the Court of Appeal. In order to appreciate the essence of this requirement of law let me reproduce the provisions of Rule **45(a) of the Court of Appeal Rules 2009**. It provides that:

45 (a) 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 fourteen days of the decision;

Rule 45(a) should be read together with Rule 49(3) of the Court of Appeal Rules, 2009 which provides that:

Every application for leave to appeal shall be accompanied by a copy of the decision against which it is desired to appeal and where application has been made to the High Court for leave to appeal by a copy of the order of the High Court.

In the line of the above cited authorities, it is clear that it is a mandatory requirement to attach a copy of the decision which is intended to be appealed against. The assertion that the documents were not supplied in time cannot stand. I say so because as stated by Mrs. Rwechungura, **section 19(2) of the Law of Limitation Act Cap 89 RE 2002** excludes the days for securing the said copies in computation of time to appeal. The case of **Alex Maganga** is distinguishable from the present case because it was decided in 2003 before the enactment of the new Court of Appeal Rules, 2009.

In the upshot, I find merits in the preliminary objection raised. The application is therefore improperly before this court because it is not accompanied by a copy of the decision against which it is desired to appeal. I hereby uphold the preliminary objection and the application is hereby struck out with costs.



C. W Makuru
JUDGE
10/07/2018

Court: Ruling delivered in court this 10th day of July, 2018 in the presence of Mr. Asante Hosea, learned State Attorney for the Applicants and in the absence of the Respondents. Respondents to be notified.



C. W Makuru
JUDGE
10/07/2018