

**IN THE HIGH COURT OF TANZANIA**

**AT SUMBAWANGA**

**LAND DIVISION**

**MISC. LAND APPLICATION No. 16 OF 2019**

*(Originating from the decision of the Rukwa Land and Housing Tribunal at Sumbawanga. Hon F. Chinuku – Chairperson dated 23/04/2019, original Land Case No. 06/2017 Kipili Ward Tribunal)*

**KIKUYU SOSOMA ..... APPLICANT**

**VERSUS**

**CHARLES KADALA ..... RESPONDENT**

**RULING**

**W.R. MASHAURI**

**01/07/2020 & 24/08/2020**

This is a Ruling in which applicant, filed his application for extension of time to lodge an appeal made under section 41(2) of the Land Disputes Court Act No. 2 of 2002 as amended by Act No. 2 of 2016. Upon filing the application and summons being issued respondent enters appearance. On the 23/04/2020 parties were prayed to dispose of the application by way of written submissions, prayer Granted and filing schedule supplied. On 28<sup>th</sup> May, 2020 respondent prayed to file his submission later but he instructed to file subject to trial judge directives. All parties filed their submissions in the court.

In the submissions, Applicant represented by Mr. Peter Kamyalile (advocate) while respondent represented himself. Applicant in his submission state that, he discovers that, his application is incompetent for being filed under wrong provision of the law S. 41(2) of the Land Dispute Court Act [cap 216], instead of S. 38(1) of the Land Dispute Court Act [Cap 216 R.E 2019] which is applicable for extension of time for matter originating from ward Tribunal. The court is not properly moved by the application for non-citation of the enabling provision of the law. Further he submits that, there is no competent application before the court for extension of time which could be granted or rejected. He cited the case of **Minani Rashid Vs The Republic**, Criminal Appeal No. 67 of 2009 CAT (unreported). He finished by prayed the application to be struck out without costs.

In reply, respondent submitted that, applicant filed incompetent application for being filed under wrong provision of the law to wit Section 41(2) of the Land Dispute Court Act (Cap 216 R.E 2019) instead of section 38 of the same act. It is not disputed. That is wasting the time of the court, therefore for discouraged thus kind of disturbance this application be dismissed thereof. Citing wrong provision is not a minor effect, it is fatal incurably defective since it goes to the root of the case, therefore the matter shall be dismissed for want of merit.



Respondent added further that, **Minani Rashid** the case of (supra) is not applicable in this case, since the applicant cited Criminal case whiles the matter on hand is a civil case. He prayed to dismiss the application.

Rejoinder, applicant submit that, the order of the court require the respondent to file his submission on 20<sup>th</sup> May, 2020 but he filed 28<sup>th</sup> May, 2020 which is time barred for 8 days. He added that, a matter of practice submission filed in argument of cases, where no submission is filed as ordered the same regarded as a non-appearance and non-prosecute. He cited the case of **Ally Uhonde Versus Maliki Uhonde** Misc Land Application No. 50 of 2006 HC Land Division. He prayed to allow the application exparte.

After taking all submissions above, my question is whether the application had a merit.

In considering this application, there are two things to deal with; respondent reply and rejoinder of applicant. To start with respondent reply, as to the record of 23<sup>rd</sup> July, 2020 and as I said above scheduling date of reply was on 20<sup>th</sup> May, 2020 but respondent filed on 28<sup>th</sup> May, 2020. This means that respondent filed his submission out of court order and without leave of the court. My question is, what is the impact of failure to file submission as to court order? The case of **NICO OF (T) &**

CAT at Dsm June 2009 had this to say:-

*"the 1<sup>st</sup> applicant did not file submission on due date as ordered. Naturally, this court could not be made impotent by a party's inaction. It had to act. And, it is trite law that failure to file submission is tantamount to failure to prosecute one's case"*

However, submission of respondent which filed out of court date didn't been considered in determining this application, this was in the case of **Jerald Jordan Vs E. R. Mwakasala** Civil case 398/2001 HC at Dsm October, 2007 has this to say

*"As the applicant did not file written submissions within the time scheduled, and as the result the submissions filed late were not considered in determining the application"*

It is strictly, that written submission filed out of courts' date was not considered in determining the application, this also is correct stand in practise, court order must be obeyed and it is a spirit of judicial practice. Any intervention of courts' date of filing brings anomalies in which no where his case hinged, absence of submission is like on the fateful date respondent didn't enter appearance in court and make submission.



As far as the joinder is concerned, it is trite position of the law and practice that, essence of rejoinder is to answer any new fact or issue raised by respondent in his reply or applicant to emphasize on his point after reply and not otherwise. The rejoinder in record carried new thing which is delay in filing reply. I tried to look into submission in chief as well as in reply, no phrase or paragraph talks about delaying in filing reply. For me, as to its substance, to accept it, is bad in law. It occasion to injustice. Practically, no way respondent could have been accorded an opportunity to be heard on it. As to that, this rejoinder violates the law and practice and is unsustain hence expunged from the record.

Stepping into main submission of the applicant, he submitted on the incompetence of the application by derived under wrong provision of the law. I joined hand with the applicant, as to reason that, cited provision (S. 41(2) of Land Dispute Court act, as amended its about extension of time for matter originated from DLHT while this application is for matter originated from Ward Tribunal which is subject to S 38(1) of Land Dispute Court Act Cap 216 R.E 2019.

The only question here is whether the application to be dismissed or strike out?

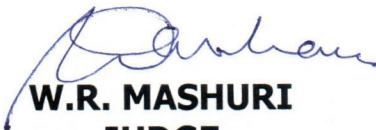
My answer is to strike out, as to my reason that: it is trite law and practice that whenever application contained wrong citation or wrong

provision it amount to incompetent before the court. Incompetent it means what is before the court being abortive and not a properly constituted application at all and implies that there was no proper application capable of being disposed of as to its merit, must be strike out. In the case of **Godfrey Kimbe Vs Peter Nganyani** Civil Appeal 41/2014 CAT at Dsm July 2017 (unreported) laydown that:-

*"it is trite law that wrong citation of the provisions under which an application is made makes that application incompetent and must be strike out"*

As to the circumstances above, I agree with applicant, and accordingly, I hereby strike out this application.

It is so ordered.

  
**W.R. MASHURI**  
**JUDGE**  
**24/08/2020**

Date: 24/8/2020

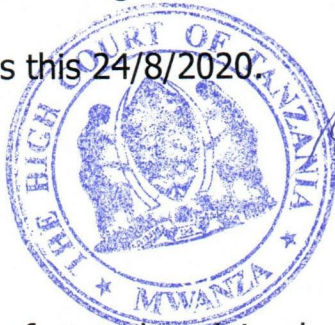
Coram: Hon. W. R. Mashuri, J

Applicant

Respondent:

B/c: Felister Mlolwa, RMA

**Court:** Ruling delivered in court by video conference in absence of all parties this 24/8/2020.



  
**W.R. MASHURI**  
**JUDGE**  
**24/08/2020**

Right of appeal explained.



  
**W.R. MASHURI**  
**JUDGE**  
**24/08/2020**