

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**MISCELLANEOUS LAND APPLICATION NO. 176 OF 2019**

(Arising from the High Court of Tanzania at Mwanza Land Appeal No 83 of 2017 before  
Honorable Mgeyekwa, J)

**KENNEDY KUBUKA KANO .....APPLICANT**

**VERSUS**

**TANZANIA AGRICULTURE INPUTS  
FUND AND ANOTHER .....RESPONDENTS**

**RULING**

27 & 29/05/2020

**RUMANYIKA, J.:**

It comes at the instance of Kennedy Kubuka Kano (the applicant), with respect to decision of 26/10/2019 of this court for leave to appeal to the Court of Appeal of Tanzania one having been refused extension of time to set aside order of Musoma District Land and Housing Tribunal (the DLHT) of 2/5/2017 the applicant's appeal herein having been dismissed for being time barred. All began a decade ago with the Applicant's Land Application No 67 of 2010 in the DLHT.

The application is brought under Section 47 (1) of the Land Disputes Courts Act and Section 5 (1) of the Appellate Jurisdiction Act Chapters 216 and 141 RE.2002 respectively also Rule 45 (a) of the Court of Appeal

Rules, 2009. It is supported by affidavit of the applicant herein represented By Mr. Musa Nyamwelo learned counsel. Mr. Charles Malyato learned counsel appeared for Tanzania Agriculture Inputs Fund and another (the respondents).

When the application was called on 27/5/2020 for hearing, but following global outbreak of Coronavirus Pandemic, and pursuant to my order of 6/5/2020 parties were present online (mobile numbers 0765 980 231) and 0784 739 298) respectively, by way of Audio Teleconferencing I heard them.

Mr. Musa Nyamwelo learned counsel in a nutshell submitted that within time the applicant having had applied for copies of decision and proceedings of the DLHT but he was late in the day i.e on 13/10/2017 supplied, all such time he spent waiting for the copies it should have been excluded for the purposes of calculating the limitation period (counsel cited provisions of Section 19 (2) of the Law of Limitation Act Cap 89 RE. 2002 and the case of **Citbank Tanzania Limited V. TTCL**, Misc. Civil Case no 6 of 2003 (HC) Dar es salaam (unreported) that there were meritorious legal and factual points by way of appeal determinable by the highest fountain of justice namely **whether the judge was right in dismissing the appeal for being time barred.**

Mr. Charles Malyato learned counsel submitted; **(1)** that the applicant's counsel had not shown arguable law points for determination by the Court of Appeal; **(2)** that since the year, 2000 the applicant had not paid the government's money instead he played delaying tactics as he

rushed to court now and again all the time losing the wars and battles. That is all.

The issue is whether there is a point of general importance upon which this court to grant leave to appeal. At least there **3** undeniable points; **One**, now for a decade or so although liable to pay the applicant had not paid the respondents even a lesser sum of whatever was undisputed; **two**, all this time but on different occasions the aggrieved applicant approached the courts and he lost the wars and battles. **Three**, in refusing him extension of time, not only the DLHT held that the applicant had not accounted for each day of the delay but also the tribunal held that the delay wasn't caused by sickness because at the time he fell sick, already the applicant was out of time. However factual it was whether or not before the judge the appeal was time barred, whether or not on that one the present applicant was heard it was immaterial much as, as said, the fact remained that for the previous decade the applicant owed the respondents some money. Like Mr. Charles, learned counsel very clearly argued, all through the applicant had taken full advantage of the cumbersome civil procedure just for the sake of it going around court corridors what a day light abuse of the court process. It would have been a different scenario if the applicant had denounced the entire debt or he had paid whichever undisputed.

When granting or not granting one leave to appeal this court is not even to pretend rehearing the matter out of which an appeal was preferred but if granted the application whole sale, no doubts this court of law shall be reducing itself into a mere conduit pipe thereby serving

interest of procedural laws rather than serving interest of justice. The devoid of merits application is dismissed with costs. It is ordered accordingly.

Right of appeal explained.



**S. M. RUMANYIKA**  
**JUDGE**  
**28/05/2020**

It is delivered under my hand and seal of the court this 29/5/2020 in absence of the parties with notice.



**S. M. RUMANYIKA**  
**JUDGE**  
**29/05/2020**

