

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA DISTRICT REGISTRY)**

AT MWANZA

MISC. LAND APPLICATION NO. 1 OF 2022

*(Originating from Misc. Land Appeal NO. 6 of 2022 in the High Court of Tanzania at
Mwanza)*

OMARI RWECHUNGURA KAKWEKE..... APPLICANT

VERSUS

EVARIST MAGOTI..... RESPONDENT

RULING

13th & 27th May, 2022

ITEMBA, J.

This is a ruling on preliminary objection, raised by the respondent, contending that the application for certificate on point of law is time barred. The application against which the preliminary objection has been raised seeks to move the Court to grant certificate on point of law which allows the applicant to institute an appeal to the Court of Appeal of Tanzania. The intended appeal is against the decision of the Court (Hon. M. Mnyukwa, J) in Misc. Land Appeal No. 06 of 2021, whose decision was delivered on 25th November, 2021. The Court allowed the appeal and reasons given to that effect was that the respondent granted right of occupancy is void and therefore it cannot establish ownership to the respondent (now the applicant) because it was not proved that he paid compensation to the original owner of the suit land.

Hearing of the objection pitted Mr. Evarist Magoti, learned counsel for the respondent, against Mr. Adam Robert, learned counsel who advocated for the applicant. In his submissions, the learned counsel submitted that, the matter was heard by Hon. Mnyukwa J, whereby the judgment was delivered on 25th November, 2021 and the applicant filed his memorandum of appeal on 28th December, 2021 which was out of time by 3 days.

He further submitted that the applicant was supposed to apply for extension of time, within which he could account for the delay of each day, something that he did not. Based on that argument he urged this Court to dismiss this application with costs.

Submitting in rebuttal learned counsel for the applicant stated that, **Section 47 (1) and (2) of the Land Disputes Court's Act** (Cap. 216) R.E 2019, requires the appellant who is aggrieved by the High Court decision to file for certificate on point of law before filing an appeal to the Court of Appeal of Tanzania. He added that Section (3) of the same Act provides that the procedure for appeal is as per **Court of Appeal Rules of 1979**. And according to provisions under **Rule 83 (2)** (Supra) requires notice to be filed within 30 days. He insists that the judgment was delivered on 25th November, 2021 and notice of appeal to the Court of

Appeal was filed on 24th December, 2021 therefore the notice was within 30 days as the law requires. He further contends that this application was filed on 28th December, 2021 and provisions under **rule 46 (1)** of Court of Appeal Rules (Supra) states that the application for certification is lodged after the notice is filed and that as this application was filed 4 days after the notice was filed hence the application is within time based on the rules. He prays for preliminary objection to be dismissed with costs.

In his brief rejoinder the learned counsel for the respondent reiterated his prayer that the application be dismissed with costs.

What is gathered from the parties' submissions, there appears to be a consensus that the instant application was filed on 28th December, 2021 which is 33 days after delivery of judgment.

The question that should pre-occupy the court is whether the application before this Court is time barred and therefore, incompetent. The general principle is that any application preferable before this court should be brought within prescribed time, failure of which it renders the same to be incompetent. However, in accordance with provisions of **Section 5 (2) (c) of the Appellate Jurisdiction Act R.E 2019**, it is trite law that any matter originating from Primary Court or Ward tribunal shall not lie against any decision of the High Court unless the High Court

certifies that a point of law is involved in the decision. Also, this being mandatory requirement the same has to be entertained within time.

It is the argument by the respondent that, since the instant application was filed 3 days after expiry of 30 days from when the decision sought to be challenged was delivered the same was time barred while the applicant holds view that the fact that notice was filed within 30 days from delivery of judgment the application is within time.

In determining this objection, the court will be guided by the Court of Appeal Rules Cap. 141. Section 83(2) is the one which sets the time limitation for filing a notice of appeal and it states as follows:

83(2) "Every notice shall, subject to the provisions of rules 91 and 93, be so lodged within thirty days of the date of the decision against which it is desired to appeal."

Having gone through the records the Notice was filled on 24th December, 2021 which was within 30 days from delivery of judgment and the application for certification was filed on 28th December, 2021. Therefore, the notice was field within time. The application for certification was filed 33 days after delivery of judgment.

Section 47(3) of the Land Disputes Act, Cap 216 states that:

“(3). Where an appeal to the Court of Appeal originates from the Ward Tribunal, the appellant shall be required to seek for the Certificate from the High Court certifying that there is point of law involved in the appeal.”

The section does not provide any time limitation. At the same time, **Rule 83(2) of Court of Appeal Rules** (*supra*) is the one which sets the time limitation for filing a notice of appeal that is within thirty days from the date of the decision against which it is desired to appeal. As there is no specific time provided for filing an application for certificate on point of law, this necessitates the court to resort to the **Law of Limitation Act**, Cap 89 R.E 2019, whereas item 21 of part iii of the Schedule to the Act, provides that:

"Application under the Civil Procedure Code, the Magistrates' Courts Act or other written law for which no period of limitation is provided in this Act or any other written law time limitation will be sixty days"

It is my considered view that, since the notice of appeal was filed within required time, and the relevant statutes are silent on limitation of time to institute the applications of this nature, the same has to be preferred under item 21 of part iii of the Schedule to the Law of Limitation Act (*Supra*), which provides for the period of 60 days from the time when the sought judgment to be challenged was delivered.

Looking at the instant application, the decision was delivered on 25th November, 2021 and this application was filed on 28th December, 2021, which was within 60 days after delivery of judgment. Hence this application is filed within time.

In view of the foregoing, I find the objection lacking in substance. Consequently, I overrule it and order that the application should proceed with hearing on merit.

It is so ordered.

DATED at **MWANZA** this 27th day of May, 2022.

