

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

MISCELLANEOUS CIVIL APPLICATION NO.77 OF 2020

(Originating from Misc. Civil Application No. 24 of 2020)

**HAWA ALLY, AS AN ADMINISTRATOR OF THE
ESTATE OF THE LATE IBRAHIM SEIF APPLICANT**

VERSUS

OMARY HAMAD RESPONDENT

RULING

Last order: 02.09.2020

Ruling date: 14.09.2020

A.Z.MGEYEKWA, J.

The application before this Court emanates from the ruling of the High Court of Tanzania at Mwanza, Hon. Rumanyika, J. The learned judge dismissed the application for being time-barred. The instant application is brought under Section 5(2),(c) of the Appellate Jurisdiction Act, Cap.141 [R.E 2002]. The applicant seeks this court

to certify that there are points of law in the decision of this Court in Misc. Civil Application No. 24 of 2020 whereas the application was dismissed.

At the hearing of the application, the applicant enjoyed the legal service of Mr. Ally, learned counsel while the respondent had the legal service of Mr. Kelvin, learned counsel.

In support of the application, the learned counsel for the applicant elaborated on the grounds in support of the application for certification. He prays this court to adopt his affidavit and annexes to form part of his submission. He submitted that their prayers are concerning certification on the point of law, whereas, the applicant prays to this court to certify that there is a point of law involved which attracts the attention of the court of appeal.

In his further submission, the learned Advocate for the applicant stated that the application is made under section 5 (2) (c) of the Appellate Jurisdiction Act. Mr. Ally urged this court to adopt his affidavit and form part of his submission. The learned counsel for the applicant submitted that the applicant prays for this court to certify that there are points of law involved which attracts the attention of

the Court of Appeal of Tanzania. He wants the Court of Appeal of Tanzania to determine whether it was tenable for the trial court to omit exercising its power of inspection. Mr. Ally submitted that in Application No.22 of 2020 before this court, the applicant urged this court to conduct an inspection and find out whether the Primary Court considered the opinions of court assessors as far as Islamic rights concerned in matters related to inheritance.

The other ground that the learned counsel for the applicant submitted was that, the Court of Appeal needs to determine whether the respondent was entitled to inherit any property of the late Ibrahim during the lifetime of her mother. The applicant's Advocate continued to submit that they want the Court of Appeal of Tanzania to determine whether the respondent has *locus standi* in institution any complaint against the applicant.

Mr. Ally rebutted that the application before this court was not related to revision as stated by this court instead the applicant prayed for this court to conduct an inspection under section 30 (1) and (3) of the Magistrate Courts Act Cap.11 [R.E 2019]. He bemoaned that the application was dismissed on the ground that

the revision application was time-barred under Item 21 Part III of 1st Schedule of the Law of Limitation Act, Cap.89 [R.E 2019].

The applicant's Advocate further argued that whether the cited section 21 Part III of 1st Schedule of the Law of Limitation Act Cap.89 [R.E 2019] applies in the inspection. He lamented that this court also dismissed the application for non-citation of proper section 30 (a) instead of citing section 30 (1), (a) of the Magistrate Courts Act Cap.11 [R.E 2019]. He complained that this court could strike out the application instead of dismissing it.

In conclusion, he urged this court to grant the applicant's application and allow the applicant to go before the Court of Appeal of Tanzania for directions.

The Respondent's counsel opposed the application. He argued that the dispute is in relation to the Ruling dated 31st day of May, 2020 by Hon. Rumanyika, J. He argued that the respondent raised a preliminary objection that the application was time-barred as a result the application was dismissed for being time-barred. Mr. Kelvin went on, it is trite law that all applications which are not specified under the Act must be filed within 60 days. He referred this

court to page 3 of the judgment whereas, this court found that the applicant was required to file an application for extension of time. The learned counsel continued to argue that the applicant also cited a wrong section of the law.

In conclusion, Mr. Kelvin insisted that the raised points of law do not attract the attention of the Court of Appeal of Tanzania. He urged this court to dismiss the application with costs.

In his brief rejoinder, the learned counsel for the applicant reiterated his submission in chief and argued that the Court of Appeal of Tanzania needs to determine whether inspection falls under Item 21 Part III of the Law of Limitation Act Cap. 89 [R.E 20019]. He insisted that this court misdirected itself in finding that this was an application for revision.

In conclusion, the learned counsel for the applicant urged this court to grant the application.

I have given careful consideration to the arguments for and against the application herein advanced by both learned counsels, and the issue I have to determine is *whether there are contentious points*

of law raised in the matter which require a determination by the Court of Appeal.

In support of the application for certification, I hereby reproduce verbatim issues that the applicant stated in paragraph four of his affidavit are pertinent questions for determination by the Court of Appeal of Tanzania:-

- (a) Whether it was tenable for the trial court to omit exercising power of inspection was tenable in law.*
- (b) Whether indeed the matter of inspection is indeed have limitation as far dispensation of justice in the wake of recent amendments of law to take care of overriding objects and so on.*
- (c) Whether the trial High Court ever addressed to what was before it as far as the inspection proceeding in subordinate courts is concerned and whether the dismissal of inspection request was tenable is law.*
- (d) Whether the order for 14 days has even tabled before the parties before an order was made.*
- (e) Whether the Respondent had locus standi to complain all the way since immemorial time.*
- (f) What are limitation of jurisdiction of the High Court to inspection vis-verse revisions is concerned.*

I have perused the applicant's grounds in support of certification and the pertinent questions that he seeks the Court of Appeal of Tanzania to determine. The main issue in the applicant's case is grounded on faulting this court for considering the present application as a revision while the applicant applied for inspection. In determining this application this court is mandated under section 5 (2) (c) of the Appellate Jurisdiction Act, 1979 state that:-

“ No appeal shall lie against any decision or order of the High Court in any proceedings under Heading (c) of Part III of the Magistrates' Courts Act, 1963 unless the High Court certified_ that a point of law is involved in the decision or order.”

It is crystal clear from the wording of the section that the question of whether or not a point of law is involved in the decision or order sought to be appealed against is the responsibility of this Court. Reading the applicant's affidavit, I have noted that the applicant's grievances were against the Primary Court and this Court decision. The application with respect to Misc. Civil Application No. 24 of 2020 which was before my learned brother, Hon. Rumanyika, J, the respondent raised a preliminary objection that the application was

time-barred. The preliminary objection was upheld thus, the application was dismissed for being time-barred.

Reading, paragraph 4 of the affidavit, the applicant has demonstrated what she believes to be points of law. The applicant's Advocate has invited me to certify that there are some points of law that call for the attention of the Court of Appeal of Tanzania. I have taken time to study the affidavit and specifically paragraph 4 thereof. It seems to me, according to the applicant's affidavit; the applicant does not only want to challenge the decision of this court but she intends to challenge the decision in so far as it confirms the factual findings of the Primary Court.

In my considered opinion, therefore, the affidavit does not demonstrate any points of law that were involved in the intended third appeal which calls for the attention of the Court of Appeal of Tanzania. I am saying so because even if the application was concerning inspection, in accordance to Item 21 Part III of the 1st Schedule of the Law of Limitation Act, Cap.89 [R.E 2019] the application was time-barred. Item 21 provides that:

" Application under the Civil Procedure Code, Magistrates' Courts Act or other written law for which no period of limitation is provided in this Act or any other written law is 60 days."

Based on the above provision of the law, the application before this court was time-barred and therefore, this court was right to dismiss the application for being time barred.

In the upshot, the application for certification on point of law is hereby dismissed for the reason that there is no any point of law raised by the applicant which attracts the attention of the Court of Appeal of Tanzania. No order to costs.

Order accordingly.

Dated at Mwanza this 14th day of September 2020.




A.Z.MGEYEKWA

JUDGE

14.09.2019

Ruling delivered in the chamber this 14th day of September 2020 in the presence of both parties


A.Z.MGEYEKWA

JUDGE

14.09.2020