

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 100 OF 2020

(Originating from the decision of this Court in Misc. Land Appeal No. 49 of 2018)

NURU MWESONGO.....APPLICANT

VERSUS

SHEIKH SALUM BUSHIR.....1ST RESPONDENT

MOHAMED SALUM.....2ND RESPONDENT

Date of Ruling 20/11/2020

Last order 23/09/2020

RULING

I. MAIGE, J

This is an application for extension to apply for leave to appeal to the Court of Appeal against the decision of this Court in Misc. Land Appeal No. 49 of 2018 dated 28th June 2019 (Hon. Mgonya, J). The application is made under section 11(1) of the Appellate Jurisdiction Act, Cap. 141 R.E., 2019. The justification for the delay is accounted for in the affidavit of the applicant. In paragraph 6 of the affidavit, the applicant deposes as follows:-

6. That, I was aggrieved with that decision and opted to appeal to the Court of Appeal. However, most of the time I was sick. Upon recovery and re-visiting the law, I noted that application for leave has to be filed in 14 days from the date of judgment.

Therefore, aside from deposing a joint affidavit to rebut the facts in the affidavit, the respondents have filed a notice of preliminary objections questioning the maintainability of the application on two points of law as follows:-

- 1. That this Application is res subjudice in terms of the pending Misc. Land Application No. 521 of 2019 between the same parties and the same subject matter.*
- 2. That this Application is an abuse of court process and forum shopping.*

In his submissions in support of the second point of preliminary of objection, Mr. Nkobogo learned advocate for the respondent submitted that, since there is a pending Misc. Land Application No. 521 of 2019 before this Court between the same parties for extension of time to lodge a notice of appeal and because an application for leave to appeal to the Court of Appeal must be preceded by a notice of appeal, this application is an abuse of the Court process. He did not address the first limb of preliminary objection and I take it that it has been abandoned.

The applicant's submissions in opposition to the preliminary objection suggest that, before lodging the instant application, the applicant had filed a notice of appeal. Because it was not dated, the applicant believed that it was defective and hence the instant application. He submits therefore that, the application is properly before the Court. He submits further that, it was not harmful for him to file an application for extension of time to apply for leave to appeal while already there is an application of extension of time to lodge a notice of appeal.

I have considered the rival submissions and I am in agreement with Mr. Nkobogo, learned advocate that, this application is an abuse of the Court process. One of the reasons being that, though the extension of time is for application for leave to appeal to the Court of Appeal, paragraph 6 of the affidavit suggests that, a similar application is pending before this Court. The applicant seems to believe that for being filed after expiry of 14 days, the said application is defective. He is quite wrong. As I understand the law, by the time when the judgment, the subject of the intended appeal, was being delivered, the time limit within which to apply for leave to appeal to

the Court of Appeal was not 14 as alleged. It was 30 days from the date of lodging of the notice of appeal. In any event, the applicant would have not lodged the instant application without withdrawing the said application first or asking the Court to strike it out.

The applicant claims to have lodged, before filing the instant application, a notice of appeal. He however believes that the notice is defective for not being dated. Again, though the affidavit does not suggest that the said notice has been withdrawn or struck out, the applicant has filed another application before this Court for extension of time to lodge a notice of appeal. Unless the previous notice was withdrawn, the applicant was not expected to initiate another proceedings for extension of time to file another notice of appeal.

In view of the foregoing discussions therefore, I agree with the respondent and his counsel that the filing of the instant application

is an abuse of the Court process. Accordingly, the second point of preliminary objection is sustained and the application struck out with costs.

It is so ordered.



J. Maige

JUDGE

20/11/2019

Date: 20/11/2020

Coram: Hon. S.H. Simfukwe - DR

For the Applicant: Present in person

For the 1st Respondent

For the 2nd Respondent

For the 3rd Respondent

Ms. Modesta Medard, Advocate

RMA: Bukuku

COURT: Ruling delivered this 20th day of November, 2020.




S.H. Simfukwe
DEPUTY REGISTRAR
20/11/2020