

IN THE HIGH COURT OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 36 OF 2017

**(Originating from Land Application No. 408/2006 from the
District Land and Housing Tribunal for Kinondoni)**

KINONDONI MUNICIPAL COUNCIL.....APPLICANT

VERSUS

MALIK JUMA KINDEREMO.....RESPONDENT

RULING

HON. B. R. MUTUNGI, J

The applicant was sued in Land Application No. 408/2006 before the District Land and Housing Tribunal at Kinondoni. Things did not turn out in his favour as the Judgment pronounced on 9th October, 2014 was in the respondent's favour.

Having been aggrieved by the said Judgment, did apply to be supplied with the appeal documents on

16/10/2014. It turned out that the requisite document's were supplied to them on 26/2/2015.

Thereafter the applicant through the appeal window did file an appeal in this court christened No. 3 of 2015 on 27/2/2015.

Fate has it that on 16/12/2015 the appeal was dismissed for being time barred. The applicant did apply for the certified copy of the court's ruling which was subsequently supplied to them on 13/2/2017. The applicant is now seen once again approaching this court to have time extended for the applicant to file an appeal against the whole Judgment and decree of the District Land and Housing Tribunal for Kinondoni District in Land Application No. 408 /2006. Further the applicant prays for costs to be provided for in the cause and any other relief this court deems fit to grant.

Having been served with the chambers summons, the respondent has raised a preliminary objection to the effect that the application is untenable in law. In support of the objection raised Miss Stella Semkoko representing the respondents made a submission before the court that, in light of section 3 (1) of the law of limitation Act Cap 89 RE: 2002 the application has no room in the court.

The basis of her argument is that once (on 16/12/2016) the previous appeal was dismissed by Hon. Mwandombho .J., the applicant could no longer come to this court seeking for an extension to file yet another appeal arising from the same disputed Judgment.

In support thereof the learned counsel referred the court to the case of **Hashim Madongo and two others vs Minister of Industry and trade and 2 others Civil Appeal No. 27 of 2003 CAT Dar es Salaam – Unreported** she also cited the case of **Kinondoni Municipal Council vs Malik Juma Kinderemo Land Appeal No. 3 of 2015 High Court Dar es Salaam (unreported).**

The learned counsel in conclusion submitted that, the applicant should not be granted what it has asked for as it would amount to resurrecting the already dismissed appeal.

In reply thereto Mr. Saleh Mohamed advocating for the applicant strongly urged that, an application or appeal dismissed on a preliminary objection allows an applicant to come back and seek for an extension of time under the provisions of section 14 (1) of the law of limitation Act (supra). To back up his preposition the learned counsel cited the case of **Tanzania Fertilizer Company Limited vs**

National Insurance Co – Operation Tanzania limited (2006)

TLR 55 and the case of **Blue Stars Service Station vs Jackson Musetti t/a Musetti Enterprises (1999) TRL. 80.** In

view of the foregoing the applicant's counsel prayed the preliminary objection be overruled and consequently dismissed.

In re – joinder the respondent's counsel retaliated her earlier position and maintained the application is not maintainable in law in terms of section 3 (1) of the law of limitation Act (supra).

The issue is not hard to find that, whether the preliminary objection so raised is meritorious or not. Reading between the lines what the respondent's counsel seems to suggest is that, this court is already functus officio as the matter was already dismissed for being time barred. On the same footing the applicant is thus precluded from coming again with the same issue, in this regard coming back with yet another appeal on the same matter. The Act of this court dismissing the appeal meant or implied that a competent appeal had been disposed of. Under section 3 (1) of the law of limitation Act, a proceeding which is instituted after the prescribed period has to be dismissed. As

property submitted by the respondent's counsel of which I hold the same view, a proceeding which is dismissed can not be resurrected in the manner which the applicant is adopting. The matter would become absurd in that, in the event I grant the applicant an opportunity to bring back the appeal by extending them time to do so I will be bringing back an appeal which has already been dismissed. In other words dead and buried by my brother Judge on the ground of being time barred and hence my hands are tied.

It is my settled view, once the applicant was aggrieved by the dismissal of the previous appeal, then they should have taken steps known in law against it. This is no other than appealing to the court of appeal. Acting to the contrary the matter lies there, since the issue of time limitation had already been determined by Hon. Mwandambo . J.

In the upshot and guided by the decision in the case of **Hashim Madongo and 2 others vs Minister for Industry and Trade and 2 other (supra)** , once the applicant had been caught in the web of section 3 (1) of the law of limitation Act, (supra) the only remedy available to the applicant

after the dismissal was to appeal to the court of Appeal against the dismissal. For the sake of clarity the following is the wording of the provision itself:-

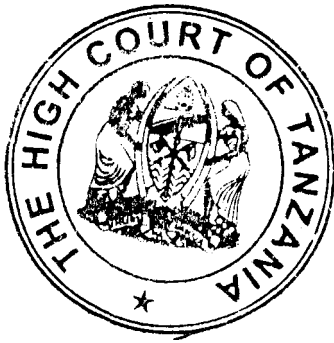
“Subject to section 3 (1) to the provisions of this Act every proceeding prescribed in the first column of the schedule to this Act, and which is instituted after the period of limitation prescribed therefore apposite thereto in the second column shall be dismissed whether or not limitation has been set up as a defence”.

As already stated earlier in the ruling, indeed the application is unattainable in law in the circumstances of the matter as the court is ***“functus officio”***. The term itself is defined in the black's law Dictionary 8th Edition at Page 696 to mean,

“having performed his or her office (of an officer or official body) without further authority or legal competency because the duties and function of the original commission have been fully accomplished”.

In light of the foregoing analysis, the preliminary objection is likewise sustained and the application sanctioned to a dismissal with costs.

Read this day of 28/3/2018 in presence of Mr. Julius Josiah (Solicitor) for the applicant and the respondent in person.

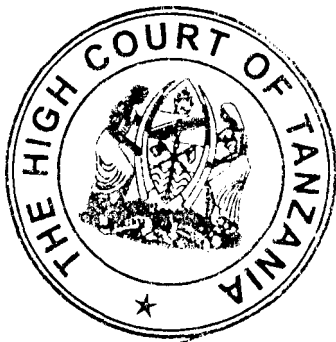


Hon. B. R. Mutungi, J

Judge

28/03/2018

Right of Appeal Explained.



Hon. B. R. Mutungi, J

Judge

28/03/2018