

TANZANIA / JUDGMENT

yusuph kahoki vs gelson kitomo 2020

tzhclandd 3894 11 december 2020

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11 December 2020

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT PAR ES
SALAAM MISC LAND APPLICATION NO. 382 OF 2019 (Arising from High Court (Land Division) in
Misc. Land Appeal No. 29 of 2014 as per Hon. Mgaya, J) YUSUPH
KAHOKI..... APPLICANT VERSUS GELSON
KITOMO. RESPONDENT

RULING

I. MAIGE, J Before me is an omnibus application for extension of time to issue a notice of appeal and to file a leave to the Court of Appeal against the decision of this Court in Misc. Land Appeal No. 29 of 2014 (Hon. Mgaya, J). The application is made under section 11 of the Appellate Jurisdiction Act and is founded on the joint affidavit of the applicants. On 11th November 2020 when the matter came for hearing, the applicant was present in person. The respondent was absent despite being duly i served. The Court ordered that the application be heard ex parte by way of written submissions which were filed in due compliance with the Court direction. In his written submissions through his advocate Melchzedek Joachim, the applicant adopts the facts in the affidavit and submits that sufficient cause for extension of time exist. He therefore prays that, the application be granted with costs. I have considered the rival submissions in line of the unopposed affidavit. The judgment the subject of the intended appeal is of this Court in exercise of its appellate jurisdiction. The appeal before the Court was a second appeal. Leave to appeal to the Court of Appeal is no doubt a legal requirement. However, in accordance with the facts in paragraph 7 of the affidavit, the applicant filed a similar application for extension of time to lodge a notice of appeal vide Misc. Land Application No. 997 of 2017. The application was granted by my Lord Judge Kente on 26th February 2018 and the applicant was allotted 14 days within which to lodge the same. For the reason deposed in the affidavit, he could not. He has been advised to file a similar application. It was improper in my view. This Court having granted 2 extension of time to lodge a notice of appeal, it cannot, in respect of the same decision entertain another similar application. Perhaps, the remedy available to the applicant subject to sufficient cause being shown was to apply for time enlargement in terms of section 93 of the CPC. As I said above, the second prayer sought in the application is for extension of time to apply for leave to appeal to the Court of Appeal. The decision of this Court was on the second appeal. Leave is not the

requirement. Instead, the prospective appellant is required to procure a certificate as to points of law. In the circumstance therefore, the grant of the instant application would be totally irrelevant and of no assistance to the applicant for the intended appeal. For the foregoing reasons therefore, I find this application incompetently before the Court. It is accordingly struck out. I will not give an order as to costs in the circumstance. JUDGE 11/12/2020 3 Date: 11/12/2020 Coram: Hon. C. Tengwa - DR For the Applicant: Present For the Respondent: Absent RMA: Bukuku COURT: Ruling delivered today in the presence of the applicant. C. Tengw. DEPUTY REGISTRAR 11/12/2020 4

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