

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 166 OF 2015

GEORGE BENJAMIN FERNANDESAPPLICANT

VERSUS

1. REGISTRAR OF TITLES

2. ANNA KIBIBI MAREALLE

}RESPONDENTS

**(Application for extension of time within which to file application for revision
from the decision of the High Court of Tanzania
at Dar es Salaam.)**

(Kibela, J.)

dated the 14th day of May, 2015

in

Land Case No. 06 of 2010

RULING

07th & 23rd February, 2017

MWANGESI, J.A.:

By a notice of motion made under Rules 10 and 48 (1) and (2) of the Court of Appeal Rules (the Rules), the applicant herein is seeking for extension of time within which he can file an application for revision of the decision of the High Court of Tanzania at Dar Es Salaam District Registry (Hon. Kibela, J), in respect of an application, which was made in relation to Land Appeal No. 06 of 2010 that was delivered on 14th May, 2010.

Previously, the application had been scheduled for hearing on the 06th December, 2016 before her Ladyship K.K. Oriyo, J.A., Nonetheless, the hearing could not proceed after it had been disclosed that, the respondents had not been supplied with the written submissions of the applicant. On the consent of the learned Counsel for all parties, the hearing was deferred to the subsequent session.

When the application was called on for hearing today, Mr. Haruna Matagane, learned Senior State Attorney did appear for the first respondent, while learned Counsel Mr. Sam Mapande, did appear for the second respondent. On the other hand, there was no appearance, of neither the applicant by himself or through his learned Counsel, who had however been duly served on the 19th January, 2017. Upon the learned Counsel for the respondents being asked by the Court as to the way forward, learned Senior State Attorney Mr. Haruna Matagane, on behalf of the first respondent, did in the first place pray to withdraw the notice of preliminary objection, which he had lodged on the 11th January, 2017. The prayer for withdrawal was made under the provision of Rule 4(2)(a) of the

Court of Appeal Rules (the Rules), on the reason that, it is not maintainable.

Secondly, the learned State Attorney did ask the Court to strike out the application for want of prosecution because the applicant who was aware of the hearing of the application to day has failed to enter appearance to prosecute his application for no any good cause. On his part, learned Counsel Mr. Sam Mapande on behalf of the second respondent, relying on the decision of this Court in the case of **Tanzania - China Friendship Textiles Company Limited [2006] TLR 70**, where it was held that, a preliminary point of law can be raised at any stage of the proceeding upon its discovery, has argued that, the application that has been lodged by the applicant to seek for extension of time to file an application for revision, is a baseless exercise because the intended application for revision is un-maintainable in terms of the provision of section 5(2)(d) of the Appellate Jurisdiction Act Cap 141, as amply interpreted by Mrosso, J.A (as he then was) in the case of **Mahendra Kumar Govindji Monani Vs Tata Holdings (Tanzania Ltd) and Another Civil Application No. 50 of 2002 CAT (unreported)**. Interpreting section 5(2) (d) of the Appellate Jurisdiction Act, the learned Justice of Appeal did state that, an appeal against an interlocutory order can only lie, where the interlocutory order has the effect of disposing off the matter. Since the ruling given by Kibela, Judge did not dispose of the appeal at the High Court, it has been his firm proposition that, such ruling is not subject to appeal or revision in line with what was held in the case of

Mahendra (supra). In the circumstances, Mr. Sam Mapande, learned Counsel, has strongly argued the Court to dismiss the application.

On my part, I find no bases to dwell on the grounds that have been raised by learned Counsel Mr. Sam Mapande to challenge the application by the applicant on the reason that, there has been no one to prosecute the application. Without any further ado, I would therefore, dismiss the application for want of prosecution under Rule 63(1) of the Court of Appeal Rules ("the Rules"), but, I make no orders as to costs.

Order accordingly.

DATED at **DAR ES SALAAM** this 13th day of February, 2017

S.S. MWANGESI
JUSTICE OF APPEAL

I certify that this is a true copy of the original.




E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL