

**IN THE HIGH COURT OF TANZANIA**

**DODOMA SUB REGISTRY**

**AT DODOMA**

**MISCELLENOUS LAND APPLICATION NO. 28021 OF 2023**

*(Originating from the decision of the High Court of Tanzania, Dodoma Sub Registry dated 15<sup>th</sup> November 2023 in Land Appeal No. 16 of 2022)*

**MATHEW SILAYO ..... APPLICANT**

**VERSUS**

**CONSOLATA DAUD MALLYA ..... RESPONDENT**

**RULING**

*Date of last order: 24/01/ 2024*

*Date of Ruling: 05/02/2024*

**LONGOPA, J.:**

On 15<sup>th</sup> November 2023, this Court quashed the judgment and set aside the decree of the District Land and Housing Tribunal for Dodoma at Dodoma which was entered in favour of the Applicant herein. This Court as a first appellate court entered judgement and decree in favour of the Respondent herein upon re-evaluation of evidence available on record. The Court declared the Respondent as the rightful owner of the disputed plot and the Applicant as a trespasser.



The Applicant being dissatisfied by that decision of the High Court of Tanzania, Dodoma District Registry at Dodoma (Longopa, J:,) dated 15<sup>th</sup> November 2023 in Land Appeal No. 16 of 2022 preferred an application for leave to appeal to Court of Appeal under Section 47(1) of the Land Disputes Courts Act, Cap 216 R.E. 2019 and Section 5(1) (a) and (c) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019. The orders sought in the Chamber Summons are that:

*(a) That this Honourable Court be pleased to grant leave to appeal to the Court of Appeal of Tanzania against the decision of this Honourable Court (Longopa, J) in Land Appeal No. 16 of 2022 dated 15<sup>th</sup> November 2023.*

*(b) Costs of this application be borne by the Respondent;  
and*

*(c) That this Honourable Court be pleased to grant any other relief(s) as it deems fit to grant.*

The application is supported by an affidavit of **Ms. Catherine Aniceth Wambura**, learned advocate for applicant. The affidavit avers that the appeal is preferred for the Court of Appeal to determine whether trial judge was right to declare that the respondent herein as a rightful owner of the disputed landed property in Plot No 139 Block "C" Ilazo North within the Dodoma Municipality. Further, the applicant intends to challenge the appellate court's judge decision to raise issues *suo motto* without affording



parties the right to be heard by analysing documentary evidence from both sides available on record to reach to conclusion that respondent herein is the rightful owner of the property in dispute.

Also, the affidavit reveals that the applicant intends to challenge nullification of sale agreements under which the applicant claims ownership of landed property in dispute. Further, the applicant intends to challenge on whether presence of Transfer of an Offer of the Right of Occupancy comprising of Landforms No. 29, 30 and 35 which do not show that they were approved by Commissioner for Lands and that there is no evidence of payment of requisite fees do not amount to transfer of such right of occupancy.

Moreover, the applicant wishes to challenge to the Court of Appeal whether it was proper and right for appellate court's judge to declare that disposition by Juma Rashid Idd to the Applicant in respect of Plot No. 139 Block "C" Ilazo North within Dodoma Municipality was ineffectual while the said Juma Rashid Idd was not party to the suit. Additionally, the applicant intends to challenge on whether it was proper for a trial judge to disregard the issue of change of assessors and their participation in determination of Land Application No. 127 of 2019.

The respondent's counter affidavit sworn by one **Joseph Mathias Matimbwi**, advocate strongly opposed the applicant's averments regarding challenging the judgement of the first appellate court. He



reiterated that the decision by honourable judge was legally and justified in eyes of the law as it was made after a kin analysis of the evidence available in court then came out with just independent decision.

On 24<sup>th</sup> January 2024 when the matter came for hearing of the application, the applicant enjoyed legal services of Ms. Magreth Mbasha, learned advocate while the respondent was represented by Mr. Joseph Matimbwi, learned advocate. On this material date, both counsel for the parties informed the Court that there are issues parties wished to raise off record.

This Court informed the parties that it has noted that this application was filed on 14th December 2023, thus the Parties were invited to address the Court on two aspects, namely:

- (a) Whether the application before the Court is valid given the amendments brought by the Legal Sector Laws (Miscellaneous Amendments) Act No. 11 of 2023; and
- (b) What is the way forward if the application/matter is no longer tenable before this Court?

Ms. Magreth Mbasha, learned advocate for applicant was the first to address the Court on these issues. Ms. Mbasha submitted that the applicant has perused the amendment of the law brought by the Legal Sector Laws (Misc. Amendments) Act No. 11 of 2023 particularly Section 10 which amended section 5 of the Appellate Jurisdiction Act, Cap 141 R.E



2019 effective from 1st December 2023. According to these amendments, there is no requisite to obtain leave to appeal to Court of Appeal.

It was Ms. Mbasha's further submission that amendments of the law having done away with the requirement for leave and given that the application was filed on 14th December 2023 after coming into effect of the amendment of the said law, therefore this application is not valid because of the amendments of the law made the leave to appeal no longer a prerequisite aspect prior to preferring an appeal.

Ms. Mbasha reiterated that the way forward is simple and straightforward as the application is not valid, the Court is invited to strike out the application. This was the decision in the case of **Petro Robert Myavilwa v Zera Myavilwa and Another**, Civil Application 117/06 of 2022, the Court of Appeal of Tanzania at Mbeya. The Counsel for applicant prayed that this application be struck out without orders as to costs.

Mr. Joseph Matimbwi, Counsel for respondent did not resist the submission by Counsel for applicant. Mr. Matimbwi argued that this application is not valid before this Honourable Court since there is no requirement to obtain leave to appeal to the Court of Appeal of Tanzania. Mr. Matimbwi further reiterated that the way forward is to strike out this application. He prayed for costs to follow the events.

I have dispassionately considered the submissions made by the parties. The parties are not in dispute that the matter before this Court is misplaced as the recent amendments have repealed the requirement to seek and obtain leave to appeal to the Court of Appeal. It is the parties' common prayer that such application should be struck out.

I shall demonstrate shortly on an overview of the development of law regarding the leave to appeal on land matters. The appeal to the Court of Appeal has been characterized by the requirement of leave to appeal stipulated under section 5(1) (a), (b) and (c) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019 as well as Rule 45 of the Tanzania Court of Appeal Rules, Cap 141 R.E.2019. Rule 45 amplifies the procedure and time limitation for the application for leave to the Court of Appeal.

Also, for land matters section 47(1) and (2) of the Land Disputes Courts Act, Cap 216 R.E 2019 contained provisions to the effect that appeal to the Court of Appeal would require a leave if the High Court was exercising its appellate or revisional jurisdiction. This was a position entrenched in the law prior to recent changes brought about by the amendments introduced in 2023.

In the case of **Hamisi Mdida & Another vs Registered Trustees of Islamic Foundation** (Civil Appeal No. 232 of 2018) [2019] TZCA 653 (4 November 2019), at page 11 the Court of Appeal restated the aim of leave to Court of Appeal. It stated that:

*We have purposefully revisited the above decisions of the Court to underline two points: first, that the Court has enunciated the principles on the grant of leave to appeal in different ways but we think they essentially arrive at the same ultimate result. Secondly, that an application for leave does not involve a rehearing of the matter for which leave to appeal is being sought. **While the application for leave must state succinctly the factual or legal issues arising from the matter and demonstrate to the court that the proposed grounds of appeal merit an appeal, the court concerned should decide whether the said proposed grounds are prima facie worthy of the consideration of the Court of Appeal. The court would generally look at the judgment or ruling sought to be appealed against to assess whether there are arguable grounds meriting an appeal.** Certainly, such a determination will be made at the end of the day after some deliberation but not an adjudication on the merits of the proposed grounds.*

Prior to 2018, the High Court had exclusive jurisdiction to determine whether to grant leave to appeal to Court of Appeal for land matters. However, amendments introduced by section 9 (a) and (b) of the Written Laws (Miscellaneous Amendments) (No.3) Act, 2018, Act No. 8 of 2018 changed the legal landscape on leave to appeal to Court of Appeal in

matters involving land. The jurisdiction to grant leave to appeal was extended to the Court of Appeal thus applicant could have an opportunity for a second bite.

On the face of the record, the applicant is challenging seriously the findings of the High Court in respect of entering judgement in favour of the respondent by declaring the respondent as the lawful and rightful owner of Plot No. 139 Block "C" Ilazo North within Dodoma Municipality. The applicant is of the firm view that the appellate court was not entitled to nullify the sale agreement between one Allen Alvin Uronu and the respondent which nullified subsequent sale agreements on the same piece of land. The applicant further challenges analysis by the appellate court on all documentary evidence available on record allegedly without hearing the parties as well as whether it was proper for the appellate court to consider and entertain matters that were not in dispute between the parties. All these aspects as reflected in the affidavit in support of the application though strongly refuted by the respondent raise serious issues warranting determination by the Court of Appeal of Tanzania. Indeed, there are serious issues worth determination by the highest court of the land.

I would have been prepared to grant the application if the same was, legally speaking, the requirement of current legal position. This would be in line with the decision in the case of **National Bank of Commerce v. Maisha Musa Uledi (Life Business Centre)** [2020] 1 TLR 524, at p. 530 where the Court of Appeal stated that:



*In an application for leave to appeal, what is required of the court hearing such an application is to determine whether or not the decision sought to be appealed against raises legal points which are worth consideration by the Court of Appeal.*

See also **Palumbo Reef Limited v. Jambo Rafiki Bungalow** [2020] 1 TLR 559; **Afriscan Group (T) Ltd v. David Joseph Mahande and Another** [2015] TLR 37; and **Kilimanjaro Blanket Corporation Ltd v. Flamingo Auction Mart Co. Ltd and 2 Others** [2020] TLR 453.

However, this Court is enjoined to ensure that it clearly sets the legal position on any matter before it determines the instant application. The main question before me is whether the requirement of the leave to appeal to Court of Appeal for matter regarding land is still a legal requirement at the time this application was filed. I am convinced that the answer is in the negative.

I am aware that recently, the legal framework on requirement of applying for leave to appeal to the Court of Appeal has been relaxed. It is no longer a mandatory legal requirement to all appeals except in few circumstances. On 1<sup>st</sup> December 2023, the Legal Sector Laws (Miscellaneous Amendments) Act, No. 11 of 2013 came into effect. Among others, the amendment was made in the Appellate Jurisdiction Act, Cap

141 R.E. 2019 to the effect that section 5 was amended and replaced with a new provision. It is provided that:

*"10. The principal Act is amended in section 5 (a) By deleting subsection (1) and substituting for it the following:  
"(1) In civil proceedings, except where any other written law provides otherwise, an appeal shall lie to the Court of Appeal against every order or decree, including an ex-parte or preliminary decree made by the High Court, in the exercise of its original, appellate or revisional jurisdiction."*

It is observed that the requirement of leave to appeal to the Court of Appeal as provided for in Section 5(1) (a), (b) and (c) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019 prior to this amendment is no longer part of the legal requirements in Tanzania after entry into force of the Legal Sector Laws (Miscellaneous Amendments) Act, No 11 of 2023.

In **Petro Robert Myavilwa vs Zera Myavilwa & Another** (Civil Application No. 117/ 06 of 2022) [2023] TZCA 17997 (13 December 2023), the Court of Appeal of Tanzania had an opportunity to discuss the effect of the amendments brought by the Legal Sector Laws (Miscellaneous Amendments) Act, No. 11 of 2023. The Court of Appeal at stated that:

*It is my interpretation, basing on the above exposition that, the changes have done away with leave requirement*

*for one to appeal to Court against the decision of the High Court regardless of whether the impugned decision is an order, decree, an ex-parte decree or a preliminary decree when exercising its original, appellate or revisional jurisdiction. In other words, obtaining leave has ceased to be a requisite before one can appeal to Court effective the 1<sup>st</sup> December, 2023.*

Indeed, the same requirement of application for leave to appeal to the Court of Appeal under section 47(2) of the Land Disputes Courts Act, Cap 216 R.E. 2019 was removed recently. Sections 46 and 47 of the Legal Sector Laws (Miscellaneous Amendments) Act, No. 11 of 2023 state that:

*46. This Part shall be read as one with the Land Disputes Courts Act, hereinafter referred to as the "principal Act"*

*47. The principal Act is amended in section 47-*

*(a) in subsection (1), by inserting the words "appellate or revisional" immediately after the word "original";*

***(b) by deleting subsection (2); and***

*(c) by renumbering subsections (3) and (4) as subsections (2) and (3) respectively (**Emphasis supplied**).*

Under the Land Disputes Courts Act, Cap 216 R.E. 2019 the requirement of leave to appeal to Court of Appeal for matters originating from the High Court in exercise of its appellate jurisdiction was covered

under subsection 2 of section 47 of the Act. That subsection was deleted by the recent amendments as stated above. It means therefore that such requirement does not exist for all land matters originating from the High Court of Tanzania in exercise of original, appellate or revisional jurisdiction.

The current application is an application for leave to appeal to Court of Appeal against the decision of the High Court when exercising its appellate jurisdiction. It falls within the ambits of the above amendments that no longer require the parties to seek and secure leave before appealing to Court of Appeal for decisions of the High Court in exercise of original, appellate or revisional jurisdiction.

The amendments brought by the Legal Sector Laws (Miscellaneous Amendments) Act, No. 11 of 2023 being part of procedural laws have an effect of retrospective application. Eventhough, this application would have been preferred before coming into effect of the same, the determination of the application after the amendment came into effect would apply to the same as procedural laws can have retrospective application. Circumstances where the retrospective application of a statute can apply were enunciated in a case of **Joseph Khenani vs Nkasi District Council** (Civil Appeal 126 of 2019) [2022] TZCA 82 (23 February 2022). The Court of Appeal observed that:

*Whether or not legislation operates retrospectively depends on the intention of the enacting body as*





*manifested by legislation. In seeking to ascertain the intention behind the legislation the Courts are guided by certain rules of construction. One of these rules is that if the legislation affects substantive rights it will not be construed to have retrospective operation unless a clear intention to that effect is manifested; whereas if it affects procedure only, prima facie it operates retrospectively unless there is good reason to the contrary. But in the last resort it is the intention behind the legislation which has to be ascertained and a rule of construction is only one of the factors to which regard must be had in order to ascertain that intention.*

I have perused record and found that this application was filed on 14<sup>th</sup> December 2023 while the Notice of Appeal was filed on 30<sup>th</sup> November 2023. I am certain that this application was filed some weeks after the legal position on requirement of leave having been changed. Given the fact that the current position is favourably on the applicant as it removed that hurdle to convince the court determining the application for leave that there are arguable grounds of appeal or there are serious issues worth determination by the Court of Appeal, I am satisfied that the amendments are procedural in nature as they do not affect the right of the parties to appeal.



In the case of **Lala Wino vs Karatu District Council** (Civil Application 132 of 2018) [2019] TZCA 46 (1 April 2019), the Court of Appeal stated that:

*In the premises, I am of the firm view that the amendment of section 47 (1) of Cap. 216 (supra) is retrospective on two grounds: first, it pertains to the procedure governing the exercise of the right of appeal to this Court in respect of a land matter arising from the original exercise of the jurisdiction of the High Court. Secondly, the amendment contains no express stipulation limiting the ostensible retroactivity of that new provision.*

As per Court's decision, a procedural aspect of the law apply with retrospective effect as the same does not impair substantive rights and obligations of the parties. It can only be restricted if the Parliament proscribe retrospective application of procedural law vide a lucid provision of the law.

Further, in **Joseph Kahungwa vs Agricultural Inputs Trust Fund & Others** (Civil Appeal 373 of 2019) [2021] TZCA 325 (23 July 2021), the Court of Appeal reiterated that procedural laws retrospectivity is permissible. It stated that:

*Admittedly, the Mortgage Financing Act came into being in 2008 the object being to amend certain written laws with a view to providing further provisions for mortgage financing including section 127 of the Land Act which was amended by section 14(d) of the Mortgage Financing Act and introduced sixty (60) days as the notice period for a defaulting party. **It is a cherished principle of law, and we need not cite any law, that, generally procedural laws are retrospective while substantive laws cannot be retrospective and in this case the issue of notice is procedural and therefore the appellant cannot be heard to complain.** In any case while the appellant defaulted from 30th September, 2010 the notice was served on him and declined to accept on 18th November, 2010, the advertisement in both Daily News and Habari Leo (Exhibit D4) was published on 20th June, 2012 and the public auction was conducted on 14<sup>th</sup> July, 2012. The complaint by the appellant of not being given ninety (90) days has no legs to stand.*

In the case of **Modestus Daudi Kangalawe vs Dominicus Utenga** (Civil Reference No. 1 of 2022) [2023] TZCA 17935 (11 December 2023), the Court of Appeal of Tanzania was faced with determination of, among others, the application for leave to appeal to Court of Appeal. This application was filed before the enactment of the Legal Sector Laws



(Miscellaneous Amendments) Act, No. 11 of 2023. The Court observed that:

*Before dealing with the matter before us, we have deemed it crucial to point out that subsection (1) of section 5 of the Appellate Jurisdiction Act, Cap. 141 has been amended vide Written Laws (Miscellaneous Amendment) Act No.11 of 2023. Currently, the application for leave to appeal is no longer a legal requirement.*

It is clear this application deserves nothing other than being struck out as the attendant legal position does not require the parties to seek and obtain a leave to appeal to the Court of Appeal for matters originating from the High Court in exercise of its original, appellate and revisional jurisdiction.

I shall proceed to strike out the application for being preferred in ignorance of the changes of legal position brought by Section 10 of the Legal Sector Laws (Miscellaneous Amendments) Act, No. 11 of 2023 which removed the requirement of leave to appeal to the Court of Appeal. Therefore, this application is undertaken by events.

With regard to costs, the Counsel for applicant prayed that no orders to costs should be awarded while the counsel for respondent reiterated for costs. Having noted that it is the Court that has prompted the parties to



address on the validity or otherwise of the instant application, I am of the settled view that there is no need to order costs to any party. The matter has been raised by the Court *suo motto*. I find no reason to subject any of the parties to costs.

That said and done, this court finds that the application before it is misconceived as the current legal position does not contain a prerequisite of obtaining leave to appeal to the Court of Appeal against a decision of the High Court on matters involving land. It was preferred inadvertently of the changes introduced by the Legal Sector Laws (Miscellaneous Amendments) Act, No 11 of 2023. In the end, the application is struck out. No orders as to costs.

It is so ordered.

**DATED at DODOMA** this 5<sup>th</sup> day of February 2024.



*Longopa*  
**E. E. LONGOPA**  
**JUDGE**  
**05/02/2024.**