

Original

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISCELLANEOUS LAND APPLICATION NO. 674 OF 2023

(Arising from Land Appeal No. 261/2020)

JOHN THOMAS.....APPLICANT

VERSUS

KAM COMMERCIAL SERVICES.....1ST RESPONDENT

NASORO ATHUMANI ZONGO.....2ND RESPONDENT

**REGISTERED TRUSTEES OF ASHURA
FOUNDATION.....3RD RESPONDENT**

RULING

19
11th to 20th December, 2023

E.B. LUVANDA, J

The Applicant is seeking for extension of time within which to apply for leave to appeal to the Court of Appeal against the judgment of this Court dated 13/10/2021.

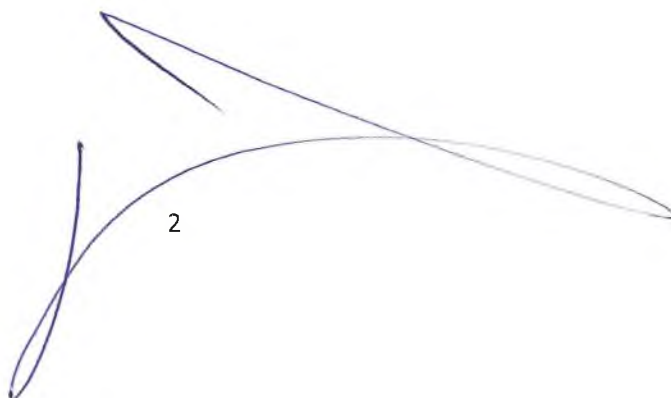
In the affidavit in support, the Applicant grounded technical delay in prosecuting a series of recourse: filed a notice of appeal within time on 21/10/2021 and served the Respondents on 22/10/2022; Misc. Land Application No. 654/2021 withdrawn for being omnibus; Misc. Land Application No.458/2022 where he was granted fourteen days to file a

certificate on point of law; Misc. Land Application No. 115/2023 withdrawn on technical ground on 16/03/2023 for reasons that certificate and leave cannot be sought together; Misc. Land Application No. 158/2023 struck out on 26/09/2023 for reasons that the appeal before this Court was a first appeal, therefore it does not fit under certificate on point of law rather ought to seek leave, hence this application filed on 9/10/2023.

In the counter affidavit of the First Respondent accused the Applicant for being negligence. The Third Respondent averred that the Applicant failed to account for each day of delay.

Ms. Beatrice Njau learned Counsel for Applicant filed submission in support of the application and Mr. Mwombeki Kabyamela learned Counsel for Third Respondent filed a reply.

However, I will not deliberate on the merit of the docket due to new development introduced vide The Legal Sector Laws (Miscellaneous Amendments) Act No. 11 of 2023 section 10 which made Amendment of the Appellate Jurisdiction Act, Cap 141 effectively 1st of December, 2023 in particular section 5 by deleting subsection (1) and substituting for it the following



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'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 revision jurisdiction'

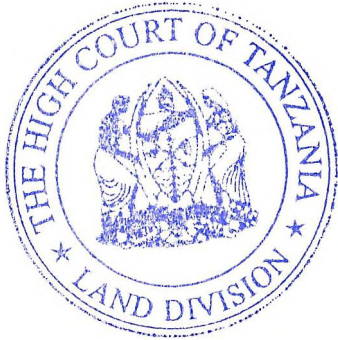
In the case of **Modestus Daudi Kangalawe (Administrator of the Estate of the Late Daudi Temaungi Kangalawe vs Dominicus Utenga**, Civil Reference No. 01 of 2022, CAT sitting at Iringa, at page 7 made it clear that currently the application for leave to appeal is not a legal requirement.

The same position was taken in **Petro Robert Myavilwa vs Zera Myavilwa & Another**, Civil Application No. 117/06 of 2022 CAT at Mbeya, at page 6 to 7, propounded,

'As alluded to earlier, the application at hand seeks for extension of time to apply for leave to appeal to Court so as to challenge the decree of the High Court when exercising its appellate jurisdiction in Probate Appeal No. 1 of 2018. The changes, being procedural law which its applicability has retrospective effect, has a bearing to the application at hand in my view. As rightly submitted by Mr. Chappa, leave is no longer a requirement at the wake of the said amendment. As such, this application has been overtaken

*by event and the only remedy is to struck it out as I hereby
do'*

Therefore, the application for leave to appeal is struck out for being
overtaken by event.



E.B. LUVANDA
JUDGE
20/12/2023

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