

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

**MISC LAND APPLICATION NO. 744 OF 2023**

(Arising from Land Appeal No. 255 of 2022)

**ANDREW J.M KITENGE.....APPLICANT**

***VERSUS***

**MAUA HAMISI RAI.....1<sup>ST</sup> RESPONDENT**

**ALEX MSAMA.....2<sup>ND</sup> RESPONDENT**

**RULING**

9/2/2024 to 19/3/2024

**E.B. LUVANDA, J**

This is an application for extension of time within which to make an application for leave to appeal against the decision of this Court dated 23/05/2023. In the affidavit in support the Applicant asserted to have sustained shock after delivery of judgment, and was rushed to Massana Hospital where he was hospitalized due to hypertensive emergency and uncontrolled type two diabetes mellitus. The Applicant alleged to have been on and off to hospital over the same ailment. The Applicant pleaded illegality on the impugned decision.

The Second Respondent filed a counter affidavit, asserted that there is no evidence to support illness and argued that illegality of the impugned decision alone is not a ground for extension of time of the decision sought to be challenged.

In a reply to the counter affidavit, the Applicant stated that in the affidavit there is attached medical report to prove illness.

The First Respondent did not file a counter affidavit.

The application was argued by way of written submission filed by Mr. Chrispine R. Nyenyembe learned Counsel for Applicant and Mr. Mrindoko Rajabu learned Counsel for Second Respondent.

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

*'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, entertaining the application for extension of time, it will be a mere academic exercise.

The application for extension of time to file an application for leave to appeal is struck out for the latter procedure is overtaken by event. No order for costs.



E. B. LUVANDA  
**JUDGE**  
19/03/2024

Ruling delivered in the presence of Mr. Chrispine R. Nyenyembe learned Counsel for Applicant and in the absence of the First Respondent and Mr. Mrindoko Rajabu learned Counsel for Second Respondent.



E. B. LUVANDA  
**JUDGE**  
19/03/2024