

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

(CORAM: MBAROUK, J.A., BWANA, J.A. And ORIYO, J.A.)

CIVIL APPLICATION NO. 63 OF 2012

**TERRAZO PAVIORS LIMITED APPLICANT
VERSUS**

**J.W. LADWA (1977)LIMITED RESPONDENT
(Application for extension of time to file a notice of appeal
against the ruling and order of the High Court of Tanzania
Land Division
at Dar es Salaam**

(Nchimbi, J.)

**dated the 16th day of March, 2010
in**

Land Case No. 95 of 2007

**.....
ORDER OF THE COURT**

MBAROUK, J.A.:

When the application was called on for hearing, Mr. Thomas Brash, learned advocate for the applicant informed the Court that he has filed his notice to withdraw the application under Rule 58(1) of the Court of Appeal Rules, 2009(the Rules). This was for the reason of the defects in the jurat. He then urged us to mark the application withdrawn with no order as to costs.

On his part, Mr. Richard Rweyongeza, learned advocate for the respondent submitted that an incompetent application cannot be withdrawn instead it has to be struck out with costs.

Thereafter, the Court wanted to satisfy itself as to whether the application is properly before us, considering the fact that this application arose from a land case at the High Court of Tanzania Land Division in Land case No. 95 of 2007. According to section 47(1) of the Land Disputes Courts Act, Cap 216 R.E. 2002, a person who is aggrieved by the decision of the High Court (Land Division) he is required to seek for leave from the High Court. In the instant case no leave has been sought or granted by the High Court. For that reason the application before us is incompetent.

On the issue of the incompetency of the application, Mr. Brash submitted that, it is proper for the Court to grant the prayer for the withdrawal of the application as prayed earlier on and should not struck out the application.

On his part, Mr. Rweyongeza submitted that an incompetent application cannot be withdrawn but it should be struck out. He too conceded that leave to appeal has not been sought by the applicant,

hence that makes this application incompetent and it should be struck out with costs.

As pointed out earlier on, the applicant has contravened the requirements under Section 47(1) of the Land Disputes Courts Act for not having sought and obtain leave to appeal. We are of the opinion that, that defect renders the application incompetent. For being incompetent, we are constrained to strike out the application. Hence, the application is hereby struck out with costs. It is so ordered.

DATED at DAR ES SALAAM this 31st day of July, 2013.

M.S. MBAROUK
JUSTICE OF APPEAL

S.J. BWANA
JUSTICE OF APPEAL

K.K. Oriyo
JUSTICE OF APPEAL

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


P.M. Kente
REGISTRAR
COURT OF APPEAL