

IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

(CORAM: KIMARO, J.A., MANDIA, J.A. And MMILLA, J.A.)

CIVIL APPEAL NO. 23 OF 2014

JOVIN MTAGWABA & 85 OTHERS.....APPELLANTS

VERSUS

GEITA GOLD MINING LIMITED.....RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Mwanza)

(Rugazia, J.)

dated the 21st day of December, 2014

in

HC. Land Case No. 1 of 2004

RULING OF THE COURT

1st & 6th August, 2014

MANDIA, J.A.:

The appeal was called on for hearing today. Before the commencement of the hearing, the Court realized that the appeal was based on a ruling by the High Court shown at page six (6) of the record. The ruling showed that it was made on the basis of an application lodged under Section 11(1) of the Appellate Jurisdiction Act, Chapter 141 R.E. 2002, in which the applicants prayed to be granted two prayers, that is,

leave to file a notice of appeal and also leave to appeal to the Court of Appeal. This Court noted that the original proceedings for which leave was sought originated in the Land Division of the High Court as Land Case No. 1 of 2004. This Court wondered why an application for leave in a land matter should be combined with an application to file a notice of appeal under the Appellate Jurisdiction Act. Mr. Benard Kabonde, learned advocate representing the appellant, noted the default and conceded that the default makes the appeal incompetent. Mr. Sinare Zaharani, learned advocate representing the respondent, was of the same view. On what to do with the defect, Mr. Benard Kabonde left the matter to the Court. Mr. Sinare Zaharani, on the other hand moved the Court to invoke its revisional jurisdiction under Section 4(2) of the Appellate Jurisdiction Act, Chapter 141 R.E. 2002 and quash the ruling of the High Court made on 8th October, 2013 which granted the applicant leave to file a notice of appeal as well as leave to appeal to the Court of Appeal.

We have considered the matter before us. It is patently clear that the appeal before us is based on the ruling of the High Court dated 8th October, 2013. This was based on an application lodged in the High Court

under Section 11(1) of the Appellate Jurisdiction Act. The application combined two prayers: a prayer for an order to lodge a notice of appeal to the Court of Appeal. The two prayers could only be made under two provisions of the laws, that is, the Section 11(1) of the Appellate Jurisdiction Act for leave to lodge a notice of appeal, and Section 47(1) of the Land Disputes Court Act, Chapter 216 R.E. 2002 of the laws for the leave to appeal. This Court has repeatedly emphasized that failure to observe Section 47(1) of the Land Disputes Act makes an appeal to the Court of Appeal incompetent, see **RICHARD KWAYU versus ROBERT BULILI**, Civil Appeal No. 9 of 2012 (unreported) and **LOUS AUGUSTINE MBUYA versus 1. ANTHONY JOHN KIMATARE 2. THOBIAS LEON MOSHI**, Misc. Civil Application No. 3 of 2013 (unreported).

As we remarked earlier, it was irregular and improper for the High Court to mix up prayers catered under different laws in one application. Acting on **THE PROJECT MANAGER, ES-KO- INTERNATIONAL INC. KIGOMA versus VICENT J. NDUGUMBI**, Civil Appeal No. 22 of 2009 (unreported) we invoke the provisions of Section 4(2) of the Appellate Jurisdiction Act and quash the application before the High Court, the ruling

and all the orders made therein and pronounced on 8th October, 2013.
The rule of thumb is that costs follow the event, so respondent shall have the costs of this appeal.

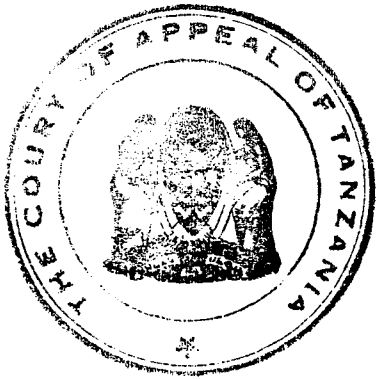
DATED at **MWANZA** this 1st day of August, 2014.

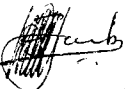
N. P. KIMARO
JUSTICE OF APPEAL

W. S. MANDIA
JUSTICE OF APPEAL

B. M. K. MMILLA
JUSTICE OF APPEAL

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




F. J. KABWE
DEPUTY REGISTRAR
COURT OF APPEAL