

**IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA**

(CORAM: OTHMAN, C.J., RUTAKANGWA, J.A., And MANDIA, J.A.)

CIVIL APPEAL NO. 96 OF 2013

- 1. LUCY DANIEL MPILUKA**
- 2. JULIUS MAKOMBE**
- 3. THERESIA MAKOMBE.....APPELLANTS**

VERSUS

- 1. FINCA TANZANIA**
- 2. YONO AUCTION MART & CO. LTD**
- 3. HAMIS MWAIKAMBO..... RESPONDENTS**

**(Appeal from the Order of the High Court of Tanzania
at Mbeya)**

(Karua, J.)

**dated the 19th day of June, 2013
in
Land Case No. 8 of 2010**

RULING OF THE COURT

**21st & 23rd May, 2014
OTHMAN, C.J.:**

When the appeal was called on to a hearing, the Respondents, having been duly served, were absent without any explanation. The Court accordingly proceeded in terms of Rule 112(2) of the Court of Appeal Rules, 2009.

Before addressing the merit of the appeal, the Court raised a threshold question, *suo motu*:

- (i) Whether or not the order of the High Court (Karua, J.) sought to be appealed against was appealable or otherwise under section 5(2) (d) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002 and;
- (ii) Whether or not, the suit being a land matter, the Appellants had sought and obtained leave to appeal in the High Court as is required under section 47(1) of the Land Disputes Court Act, Cap 216 R.E. 2002.

The Appellants, who were unrepresented, readily conceded that the order of the High Court being appealed against did not finally dispose of the suit between the parties and that they had not sought any leave to appeal from the High Court before filing their appeal.

We have closely examined the record. The Appellants filed an amended plaint on 7/11/2012 [Land Case No. 8 of 2010]. The Respondents filed their Joint Written Statement of Defence on 19/06/2013.

On 19/06/2013 the High Court had made the following impugned order:

"I will exercise my powers within the stated provisions [i.e. Order 8 Rule 1(2) of the Civil Procedure Act Code, Cap 33 R.E. 2002] and allow the defendant to present their WSD out of the prescribed procedure. I direct that the WSD be filed within five (5) days. It is so ordered".

New, section 5 (2) (d) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002 provides:

"no appeal or application for revision shall lie against or be made in respect of any preliminary or interlocutory decision or order of the High Court unless such decision or order has the effect of finally determining the criminal charge or suit".
(Emphasis added).

As generously conceded by the Appellants, we would agree that the impugned order, did not have the effect of finally determining the suit. By no stretch of reasoning could the order have had the effect of concluding the suit.

In our considered view, the policy rationale that underpins section 5 (2) (d) of the Appellate Jurisdiction Act is not far fetched. Parliament in its wisdom enacted that provision with the overarching intention of promoting the expeditious disposal of criminal charges or suits that would otherwise be frustrated or upset by preliminary or interlocutory appeals from decisions or orders that do not have the result of finally determining the charges or suits. Section 5 (2) (d) ensures the swift determination of cases by filtering out preliminary or interlocutory decisions or orders that have no trappings of finality in the determination of the charge or suit as they often delay the speedy determination of cases; increase the costs of litigation and unnecessarily consume the time of the court. That provision is in the interest of the proper administration of justice.

That apart, the appeal against that order was also not proper before the Court as the appellant had not obtained any leave from the High Court as is mandatorily required under Section 47 (1) of the Land Disputes Court Act, Cap 216 R.E. 2002 (See, **Morris Hamza Azizi V. Angelina Simon Mhavile and Another**, Civil Appeal NO. 73 of 2012 (CAT, unreported)).

For the above reasons, we proceed to declare the purported appeal incompetent and it is accordingly struck out. As the point of law was raised by the Court, *suo motu*, there shall be no order as to costs.

The matter is to be remitted back to the High Court for continuation of the trial of the suit as of 19/06/2013.

Ordered accordingly.

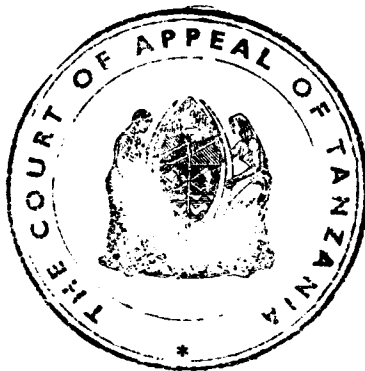
DATED at MBEYA this 22nd day of May, 2014.


M. C. OTHMAN
CHIEF JUSTICE

E. M.K. RUTAKANGWA
JUSTICE OF APPEAL

W. S. MANDIA
JUSTICE OF APPEAL

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




F. J. KABWE
DEPUTY REGISTRAR
COURT OF APPEAL