

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

(CORAM: MJASIRI, J.A., KAIJAGE, J.A And MUSSA, J.A.)

CIVIL APPEAL NO. 84 OF 2014

EMMANUEL NYAMBI APPELLANT

VERSUS

RAMADHANI SALIM RESPONDENT

**(Appeal from the Judgment and Decree of the High Court of Tanzania
(Land Division) at Arusha)**

(Bongole, J.)

dated the 8th day of February, 2013

in

Land Case No. 21 of 2009

JUDGMENT OF THE COURT

10th & 18th February, 2015

KAIJAGE, J.A.:

This purported appeal traces its origin to Land application No. 35 of 2008 instituted by the appellant herein on 5/3/2008 in the Manyara District Land and Housing Tribunal. In its decision handed down on 13/3/2009, the said trial Tribunal gave judgement and decree in favour of the appellant. The respondent was aggrieved. He successfully appealed to the High Court (Land Division) at Arusha vide Land Appeal Case No. 21 of 2009. The present purported appeal is against the decision of the High Court dated 8/2/2013.

Before us, both parties appeared in person, unrepresented.

From the material available in the record of appeal, it appeared to us that the appellant illegally applied for and obtained from the High Court an order granting him leave to appeal to this Court in violation of Rule 45 (a) of the Court of Appeal Rules, 2009 (the Rules) as read with section 47 (1) of the Land Disputes Courts Act, Cap 216 R.E. 2002 (the Act). It is against this brief exposition that when the appeal was called on for hearing, we raised a point of law, *suo motu*, whether or not in view of the said shortcoming the appeal before us was competent.

Addressing the point we raised, the appellant who is, understandably, a layman, simply urged us to give appropriate directions for his compliance in the event his appeal is adjudged incompetent for whatever reason. The respondent, on the other hand, pressed us to strike out the appellant's appeal, the order granting leave to appeal to this Court having been illegally obtained.

On our part, we entertain no doubt that the decision of the High Court dated 8/2/2013 was appealable with the necessary leave in terms of section 47 (1) of the Act which reads:-

*"47 (1) any person who is aggrieved by the decision of the High Court in the exercise of its original, revisional or appellate jurisdiction, **may with leave from the High Court appeal to the Court of Appeal in accordance with the Appellate Jurisdiction Act.**" [Emphasis supplied].*

Section 11 of the Appellate Jurisdiction Act, 1979 empowers the Chief Justice to make rules of the Court regulating appeals to this Court. It is also specifically stated under section 47 (3) of the Act that the procedure for appeals to this Court "shall be governed by the Court of Appeal Rules." This brings us to rule 45 (a) of the Rules which provides:-

"R. 45. In Civil matters-

*(a) **Where an appeal lies with leave of the High Court, application for leave may be made informally, when the decision against which it is desired to appeal is given, or by chamber summons according to the practice of the High Court, **within fourteen days of the decision.****" [Emphasis ours].*

Going by the record, it is clear that the decision of the High Court against which it was intended to appeal was delivered on 8/2/2013. The application for leave to appeal was filed timeously on 20/2/2013, but was withdrawn on 22/7/2013, with liberty to refile. Subsequent to the High Court order withdrawing the said application appearing on page 99 of the record, the appellant, on 12/8/2013, filed a fresh application for leave to appeal to this Court. This was over 150 days after the decision against which it was desired to appeal was given. Nevertheless, the High Court granted the appellant leave to appeal to this Court without there being an application for an extension of time within which to file the application for leave to appeal out of time.

In the light of the foregoing, we are settled in our minds that the High Court had no jurisdiction to entertain the appellant's belated application for leave to appeal filed on 12/8/2013 beyond the period of 14 days prescribed under Rule 45 (a) of the Rules. For that reason, the proceedings pertaining to the application in question and the resultant order granting the appellant leave to appeal to this Court were a nullity.

In the exercise of our revisional powers under section 4 (2) of the Appellate Jurisdiction Act Cap 141 R.E. 2002, we quash the said null proceedings of the High Court and set aside its order dated 21/3/2014 granting the appellant leave to appeal to this Court. We also find the present purported appeal incompetent for having been founded on the purported leave to appeal which was illegally obtained by the appellant from the High Court. Being incompetent, the appeal is accordingly struck out. Considering the fact that the legal point which led to the disposal of this matter was raised by the Court, *suo motu*, we shall make no order as to costs.

DATED at ARUSHA this 13th day of February, 2015.

S. MJASIRI
JUSTICE OF APPEAL

S. S. KAIJAGE
JUSTICE OF APPEAL

K. M. MUSSA
JUSTICE OF APPEAL



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


Z. A. MARUMA
DEPUTY REGISTRAR
COURT OF APPEAL