

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

(CORAM: MBAROUK, J.A., LUANDA, J.A., And MZIRAY, J.A.)

CIVIL APPEAL NO. 38 OF 2015

**THE BOARD OF TRUSTEES OF THE
NATIONAL SOCIAL SECURITY
FUND (NSSF) APPELLANT**

VERSUS

GRACE LUMELEZI RESPONDENT

**(Appeal from the judgment of the High Court
of Tanzania at Tabora)**

(Songoro, J.)

**dated on 10th day of December, 2013
in**

Civil Case No. 3 of 2005

.....

RULING OF THE COURT

19th & 21st October, 2016

MZIRAY, J.A.:

This appeal is from the decision of the High Court of Tanzania at Tabora (Songoro, J.) dated 10/12/2013 in Land Case No. 3 of 2005 which decided in favour of the respondent over a dispute in commercial building situated at Plot No. 3, Block A, Jamhuri Street, Tabora Municipality. In that decision the appellant was ordered to re-imburse the respondent a sum

of Shs. 2.5 Million paid as 25% of bidding price with interest of 10% per annum from the date the suit was instituted to the date of judgment. In addition, to pay the respondent Shs. 8. Million as general damages plus interest and costs of the suit.

The appellant was aggrieved by the decision and filed a Memorandum of Appeal to this Court with four grounds of appeal criticizing the order of reimbursement of Shs. 2.5 Million and the award of general damages at the tune of Shs. 8 Million, together with the other ancillary orders made.

At the hearing of the appeal, the appellant was represented by Mr. Yusuf Sheikh, learned advocate and the respondent had the services of Mr. Musa Kassim, learned advocate. When the appeal was called on for hearing, Mr. Musa Kassim stood up and brought to our attention the Notice of Preliminary Objection he filed on 18/10/2016. In that Notice, he raised a single point of law against the appellant's appeal couched as follows:-

"That, the appeal before this Court is incompetent for being preferred without

obtaining leave to appeal contrary to section 47(1) of the Land Disputes Courts Act, (Cap.216 R-E. 2002).

He then prayed for the appeal be struck out with costs.

At first, when Mr. Yusuf Sheikh, learned advocate was called to respond, he did not agree with the point of objection raised but he immediately changed his stand and conceded to the preliminary objection after the Court has brought to his attention the existence of a law called The Written Laws (Miscellaneous Amendments) Act No. 2 of 2010 which amended the Land Disputes Courts Act, Cap. 216.

On costs of the preliminary objection, the two learned counsels had a disagreement. While Mr. Musa Kassim was of the view that the respondent should be awarded costs, on the other hand Mr. Yusuf Sheikh preferred each party to foot its/her own costs.

In resolving the preliminary objection, we find it prudent to start with the requirements of Section 47(1) of the Land

Disputes Court Act as amended by the Written Laws (Miscellaneous Amendments) Act No. 2 of 2010.

Section 47(1) states thus:-

*“Any person who is aggrieved by the decision of the High Court in the exercise of its original, revisional or appellate jurisdiction, may **With the leave from the High Court appeal to the Court of Appeal in accordance with the Appellate Jurisdiction Act.**”* (Emphasis supplied).

Deducing from the above section, it is clear that **leave to appeal** is a prerequisite before an aggrieved party knocks the door of the Court of Appeal in a land dispute originating from the High Court in the exercise of its original, revisional or appellate jurisdiction. Without obtaining such leave, an aggrieved party from a decision of the High Court cannot file an appeal in the Court of Appeal. Undisputedly, in this matter such leave was not secured.

Mr. Sheikh, learned advocate for the appellant, at first doubted the merit of the preliminary objection raised. He was of the impression that in so long as the suit was heard by a

judge of the High Court Registry and not the Land Division then the suit fall squarely as a normal civil suit on which leave to appeal is not required. This in our view is a misconception and we need to make clarification here. Vide the Written Laws (Miscellaneous amendments) Act No. 2 of 2010, section 2 of the Land Disputes Courts Act was amended as shown at Part VIII Section 19 of Act No.2/2010 which reads:

*"19. The Principal Act is amended by deleting:-
(a) definition of the term "High Court (Land Division)" and substituting for it the following definition:-*

"High Court" means the High Court of Tanzania established by Article 108 of the Constitution of United Republic"

(b) term "High Court (Land Division)" wherever it appears in the Act and substituting for it with the term "High Court".

We find that significantly the amendment brought one major development in expediting the hearing of land disputes at the level of the High Court. This amendment removed the exclusiveness of the Land Division to hear land disputes and it

conferred jurisdiction to all High Court judges to hear land disputes. With such development, all High Court District Registries are sub-Registries of the Land Division.

After those few observations, we find merit to the preliminary objection raised after Mr. Sheikh counsel for the appellant had conceded and accordingly we strike out this appeal with costs.

DATED at **TABORA** this 21st day of October, 2016.

M. S. MBAROUK
JUSTICE OF APPEAL

B. M. LUANDA
JUSTICE OF APPEAL

R. E. S. MZIRAY
JUSTICE OF APPEAL

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


E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL