

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

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

CIVIL APPEAL NO. 44 OF 2015

1. BENJAMIN MANOTA 2. MWANA SELEMANI 3. MUSSA BENJAMIN	} APPELLANTS
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VERSUS

1. GEITA GOLD MINE LTD 2. THE PRINCIPAL SECRETARY, MINISTRY OF ENEGY AND MINERALS 3. ATTORNEY GENERAL	} RESPONDENTS
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**(Appeal from the decision of the High Court
of Tanzania at Mwanza)**

(Sumari, J.)

dated the 8th day of December, 2014

in

Land Case No. 37 of 2005

RULING OF THE COURT

24th & 26th May, 2016

LUANDA, J.A.:

On 8/12/2014 Sumari, J. handed down a decision of the High Court in respect of a land dispute between the current appellants as the plaintiffs against the respondents, the defendants. The appellants lost the suit. Aggrieved by that decision, the appellants are intending to appeal to this Court. They accordingly filed a

notice of appeal on 17/12/2014 with a view to challenging the decision.

On 13/1/2015 they lodged their appeal. On 13/5/2015 Mr. Galati Mwantembe learned counsel, who represented the 1st respondent, lodged a notice of preliminary objection consisting of three points. A few days before the date of hearing of this appeal, Mr. Galati filed yet another notice of preliminary objection on 8/5/2016 consisting of two points namely:-

- 1. The appeal is incompetent as it was filed without leave of the High Court as required under S.47(1) of the Land Disputes Act, 2002.*
- 2. The appeal is incompetent for lack of complete record of Appeal thus in contravention of Rules 96(1) (d) and (K) of the Court of Appeal Rules, 2009.*

When the appeal came for hearing, Mr. Galati abandoned the notice of preliminary objection he had filed earlier on 13/5/2015 and remained with that he had filed on a later date on 18/5/2016.

When the matter was called on for hearing on 24/5/2016, Mr. Galati argued the first point. He informed the Court that since the dispute touches on land, then the appeal lodged by the appellant is incompetent for lack of leave of the High Court as provided under S. 47(1) of Land Disputes Courts Act, Cap. 216 RE 2002. As to the second point of objection, he did not address us as what went amiss. Be that as it may, he prayed the appeal be struck out. He did not ask the Court to grant him costs.

The respondents, who were unrepresented and so they appeared in person all left the matter to Court to decide. The 1st respondent said he had confidence in the Court after he had attended the Court when conducting its business some few days back during the current session.

This matter should not detain us. The dispute as we have said earlier on concerns with land. It is no wonder in the High Court (Land Division) (as it then was) it was registered as Land Case No. 37 of 2005. A party who is aggrieved by the decision of the High Court (Land Division) arising from any land matter is

entitled to appeal to this Court with leave from the same High Court. This is provided under S. 47(1) of the Act which reads:-

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

The word "may" here is to be construed as an option to any person to the case who wish to appeal. If an aggrieved person opted to appeal to this Court he must seek and obtain leave of the High Court.

Now since in our case no leave was sought and granted, the appeal before us has no leg to stand on. The 1st point of law raised is meritorious. The appeal is incompetent.

As regards the second point, though Mr. Galati did not address us, it is our expectation that in case the appellants would start a fresh the process of appeal, then it is prudent to check the

record thoroughly before lodging their appeal, lest it be struck out for failure to contain, in the record of appeal, some documents.

That said, the appeal is struck out.

Each party to bear its costs.

It is so ordered.

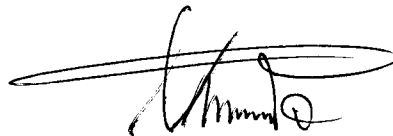
DATED at **MWANZA** this 25th day of May, 2016.

M. S. MBAROUK
JUSTICE OF APPEAL

B. M. LUANDA
JUSTICE OF APPEAL

I.H. JUMA
JUSTICE OF APPEAL

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

A handwritten signature in black ink, appearing to read 'J. R. Kahyoza', with a large, sweeping horizontal stroke above the name.

J. R. KAHYOZA
REGISTRAR
COURT OF APPEAL