

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

(CORAM: OTHMAN, C.J., KIMARO, J.A. And KAIJAGE, J.A.)

CIVIL APPEAL NO. 74 OF 2016

BETWEEN

AZARAM MOHAMED DADI.....APPELLANT

VERSUS

ABILAH MFAUME.....RESPONDENT

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

(Lila, J.)

dated 21st day of November, 2010

in

Land Appeal No. 7 of 2008

RULING OF THE COURT

03rd & 04th August, 2016

OTHMAN, C.J.:

The threshold issue before us is the competency of the appeal on a land dispute. Namely, whether or not the appellant sought and was properly granted by the court, leave to appeal to the Court in terms of the

requirement of section 47(1) of the Land Disputes Courts Act, Cap. 216 R.E. 2002 which provides:

"47(1) A 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 of the High Court (Land Division) appeal to the Court of Appeal in accordance with the Appellant Jurisdiction Act".

The appellant, Mr. Azaram Mohamed Dadi, a lay person and unrepresented by learned counsel vainly contended that the Court Registry staff had advised him that he could pursue his appeal following the institution of his notice of appeal on 2/12/2015. He acknowledged that the procedural steps of the Court of Appeal were legal and that by making mistakes one gets to know them better.

On her part, Ms. Abilah Mfaume, equally a lay person and unrepresented by learned Advocate had nothing useful to add, the matter being one on a point of law.

Having combed through the record of appeal, with respect, it is crystal clear to us that the appeal is incompetent given the absence of any valid and

surviving leave to appeal to the Court, which was neither sought by the appellant nor granted by any court.

The appellant is and continues to be aggrieved by the judgment and decree of the High Court (Lila, J. as he then was) delivered on 21/11/2010. It is on record that the appellant's previous appeals to this Court were struck out twice for being incompetent. The first time on 5/06/2013 (Civil Appeal No. 54 of 2012) and the second time on 3/12/2014 (Civil Appeal No. 1 of 2014). Thereafter, he correctly sought from the High Court an extension of time within which to file a notice of appeal. This was granted on 1/12/2015 and he correctly lodged his notice of appeal on 2/12/2015.

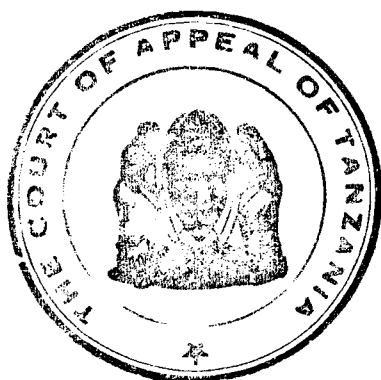
Unfortunately, the appellant did not similarly seek any extension of time within which to file an application for leave to appeal to the Court nor could he properly have sought any leave to appeal under section 47(1) of the Land Disputes Courts Act without the former. The leave to appeal that was once upon a time granted by the High Court, on 3/4/2011, no longer survived the striking out of his two incompetent appeals to the Court, respectively on 5/06/2013 and 3/12/2014. He was required to re-seek leave to appeal thereafter for the proper institution of this appeal, which

inadvertently he did not. He missed a mandatory step in the land appeal process to the Court. It is fatal to the appeal.

In these circumstances and for the reasons explained, we are compelled to declare the appeal incompetent and hereby strike it out, without costs. Ordered accordingly.

DATED at MTWARA this day of 03rd August, 2016.


M. C. OTHMAN
CHIEF JUSTICE



N. P. KIMARO
JUSTICE OF APPEAL

S. S. KAIJAGE
JUSTICE OF APPEAL

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


E. Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL