

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: LUANDA, J.A., MWARIJA, J.A. And MKUYE, J.A.)

CIVIL APPLICATION NO. 105 OF 2014

HAMISI MSUNGE.....APPLICANT

VERSUS

HAWA HASSANI MTUMWA.....RESPONDENT

**(Application for leave to appeal from the decision of the High Court of
Tanzania at Dar es Salaam)**

(De-Mello, J.)

dated the 29th day of November, 2012

in

Land Appeal No. 94 of 2009

RULING OF THE COURT

20th September & 20th October, 2017

MKUYE, J.A.

By way of a notice of motion made under Rules 45, 49 and 50 of the Tanzania Court of Rules, 2009 (the Rules), the applicant HAMISI MSUNGE apply for leave to appeal against the decision of the High Court in Land Appeal No. 124 of 2011 (De-mello,J.) dated 29/11/2012. The applicant has, in a manner which seems to confuse the matter intended to be appealed against, raised only one ground to the effect that, Mansoor, J., has rejected his first application for leave to appeal to the Court of Appeal. We are saying

in a manner that is confusing because in the title of this application it is indicated that the application is arising from Land Appeal No. 94 of 2009 that was determined by De-mello, J., which is not correct as De-mello, J., dealt with Land Appeal No. 124 of 2011. On the other hand, the ground raised in the notice of motion shows that he is not satisfied with the decision of Mansoor, J., who rejected his application for leave to appeal against the decision of De-mello, J. However, from what we could gather from his oral and written submission we have taken that the application emanates from the decision of De-mello, J., in Land Appeal No. 124 of 2011. The application is supported by an affidavit deposed by the applicant himself. He also filed written submission in support of the application in terms of Rule 106(1) of the Rules.

The respondent on her part, filed an affidavit in reply affirmed by Mr. Saleh Ramadhani Njaa together with a written submission in reply in terms of Rule 106(8) of the Rules.

Before us, the applicant appeared in person, without a legal counsel while the respondent was represented by Mr. Burton Mahenge, learned advocate.

To understand the background of this application, it is imperative to give a brief account of the underlying facts:

From the Court Record it would appear that the applicant had, in the District Land and Housing Tribunal of Ilala District (DLHT) lost a suit (Application No. 33 of 2000) which was filed by the respondent. In that suit the respondent had claimed ownership of Plot No. 19 Block "B" Kinyerezi on the ground that she was lawfully allocated by the Ministry of Land and issued a letter of offer with Reference No. LD/185576/1CC dated 6th February, 1998. The applicant's appeal No. 124 of 2011 before the High Court (De-mello) was unsuccessful. He applied for a review but was on 12/7/2013 dismissed by Mansoor, J., for being time barred. His second application for review against the ruling dated 12/7/2013 was also dismissed on 28/2/2014 by the same judge.

As he was still dissatisfied with the said decisions he lodged an application for leave to appeal to the Court of Appeal but the same was rejected by Mansoor, J., on 27/5/2014. Hence, he has filed this application as a **second bite**.

At the hearing of the application the applicant being a lay person, did not have much to say except that he sought to adopt what was contained in

the notice of motion, affidavit and written submission in support of the application in which he essentially assailed the decision of the High Court in Land Appeal No. 124 of 2011.

On the other hand, Mr. Mahenge, in the first place sought to adopt the affidavit in reply and the written submission in reply to the applicant's written submission to form part of their submission. In the course of hearing the Court wanted to know as to whether the application was tenable in view of the provisions of section 47(1) of the Land Disputes Courts' Act, Cap 216 R.E. 2002 (the LDC Act).

Mr. Mahenge submitted that, this being a land matter, section 47(1) of the LDC Act does not confer this Court with jurisdiction to entertain an application for leave to appeal on **a second bite**. For that matter, he contended, after the application for leave was rejected by Mansoor, J., the applicant ought to bring an appeal instead of the application for leave to appeal on a second bite. At any rate, Mr. Mahenge argued that the applicant had exhausted all avenues by filing two applications for review after De-mello's decision which were all dismissed by the High Court.

In view of the foregoing the crucial issue for determination is whether this Court has jurisdiction to entertain an application for leave to appeal on a second bite.

The applicant has invoked among other provisions, Rule 45 of the Rules to move this Court. The said Rule provides:

" 45 In civil matters –

(a) where an appeal lies with the 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 14 days of the decision;

(b) where an appeal lies with the leave of the Court, application for leave shall be made in a manner prescribed in Rule 49 and 50 and within fourteen days of the decisions against which it is desired to appeal or, where the application for leave to appeal has been made to the High Court and refused, within fourteen days of that refusal."

The gist of the above quoted provision is that it specifically provides for the manner, place and the time within which applications for leave to appeal are to be made. That is to say, an application can be made informally

in the High Court or by chamber summons within 14 days of the decision. On refusal by the High Court, a fresh application can be made to this Court within fourteen days of that refusal. With regard to Rules 49 and 50 of the Rules which are also invoked to move the Court, they in fact provide for the requirement of attaching the supporting documents to the application such as affidavit or affidavits in support of the application, copy of the decision or order of the High Court; and lodgment of amended documents upon leave of the Court, respectively.

As alluded earlier on, this application finds its root from the decision in Land Appeal No. 124 of 2011. After being aggrieved by that decision the applicant lodged in the High Court an application seeking leave to appeal to this Court. The application was made under among other provisions section 47(1) of the LDC Act which states:

" 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."

To our understanding, from the above cited provision two things emerge. One, all appeals to this Court emanating from the High Court

decisions under the LDC Act in the exercise of its original, revisional or appellate jurisdiction are by leave of the High Court. **Two**, the above provision gives the High Court exclusive jurisdiction to entertain applications for leave to appeal against the decisions of the High Court on land matters be it from its original, appellate or revisional jurisdiction. The provision, as it is, does not provide for lodgment of another application for leave to appeal under the Act or other written law to this Court on a second bite. We think, if the legislature had intended to give such jurisdiction to the Court, it would have so stated.

The position is different in the Appellate Jurisdiction Act, Cap 141 R.E. 2002 (AJA) which confers appellate jurisdiction to this Court. It provides for a different scheme for appeals **not governed by other written laws like the matter at hand**. Section 5 of AJA gives a right to a person aggrieved with a decision of the High Court in exercise of various jurisdictions to appeal to this Court. The section provides:

*"5(1) In civil proceedings, except where any **other written law for the time being in force provides otherwise**, an appeal shall lie to the Court of Appeal.*

a)

b)

c) *With the leave of the High Court or of the Court of Appeal against every other decree, order, judgment, decision or finding of the High Court."*

As it can be clearly seen, this provision provides for a **concurrent jurisdiction for granting leave to appeal to the Court** to any aggrieved person. This is where the relevance of rule 45(b) comes in. It provides for the order and time within which such applications can be made in the High Court and the Court. Firstly the application is to be made formally when the decision is given or by chamber summons within fourteen days of the decision desired to be appealed against. Secondly, if the application for leave is denied by the High Court then the application can be made to the Court within 14 days of the High Court's refusal which is a second bite. This is not the case with section 47(1) of the LDC Act. As there is no such arrangement under section 47(1) of the LDC Act, it follows that this Court has no jurisdiction to grant application for leave on a second bite. This stance was taken in the case of **Felista John Mwenda V Elizabeth Lyimo MSH Civil Application No. 9 of 2013** (unreported) where the Court held:

"The Court of Appeal in terms of clear provisions of section 47(1) of Cap 216 lacks jurisdiction to entertain the application.

That said and done, we think that after the High Court's refusal to grant the applicant leave to appeal against the decision in Land Appeal No. 124 of 2011, the applicant could have proceeded by bringing before this Court an appeal against the order of the High Court refusing to grant such leave. He cannot bring the matter by way of an application for leave on a **second bite**. In the sense, we agree with Mr. Mahenges' proposition.

On the basis of the foregoing, we find under the circumstances of this matter that the application is misconceived and we strike it out with costs.

DATED at **DAR ES SALAAM** this 18th day of October, 2017.

B.M. LUANDA
JUSTICE OF APPEAL

A.G. MWARIJA
JUSTICE OF APPEAL

R.K. MKUYE
JUSTICE OF APPEAL

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


A.H. MSUMI
DEPUTY REGISTRAR
COURT OF APPEAL