

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MUSSA, J.A., LILA, J.A. And MKUYE, J.A.)

CIVIL APPLICATION NO. 170 OF 2014

ELADIUS TESHA..... APPLICANT

VERSUS

JUSTINE SEKUMBO RESPONDENT

(Application from the decision of the High Court of Tanzania
at Dar es Salaam)

(Rugazia, J.)

dated the 28th day of September, 2007

in

Civil Appeal No. 19 of 2006

RULING OF THE COURT

4th & 26th July, 2018

MUSSA, J.A.:

The applicant is dissatisfied by the decision of the High Court (Rugazia, J.) in Land Appeal No. 19 of 2006 which was handed down on the 12th September, 2007.

In his first effort to impugn the decision, the applicant preferred an application for leave to appeal to this Court which was, however, struck out on the 20th January, 2009 on account of the wrong citation of the enabling provision (Chinguwile, J.). Undeterred, he filed a fresh application in the same court but, as fate would have it, on the 21st March, 2012 the application

was dismissed for being time barred (Mutungi, J.). Upon dismissal of the application, the applicant, strangely though, sought an extension of time of this Court within which to refresh his quest for leave to appeal. On the 17th September, 2014 a ~~single~~ Justice (Mjasiri, J.A), granted the extension and, hence the present application through which the applicant is seeking to replicate the quest for leave to this Court, supposedly, by way of a second bite. The application is by way of a Notice of Motion which is predicated under Rules 45(b) as well as 49(1) and 3 of the Tanzania Court of Appeal Rules, 2009 (the Rules). The same is supported by an affidavit which was duly sworn by the applicant.

From the adversary's end, the respondent greets the Notice of Motion with a notice of preliminary objection to the following effect:-

- " 1. The application is made under the wrong provisions.*
- 2. In terms of section 47(1) of the Land Disputes Courts Act, Cap 216 R.E. 2002, the exclusive jurisdiction to grant leave to appeal is in the High Court. This Court, therefore, lacks jurisdiction to entertain the present application."*

At the hearing before us, the applicant was represented by Mr. Living Kimaro, learned Advocate, whereas the respondent had the services of Mr. Samson Mbamba, also learned Advocate. At the outset, the learned counsel for the respondent abandoned the first limb of the preliminary points of objection.

Addressing us on the remaining point, Mr. Mbamba reiterated the contention to the effect that this Court has no jurisdiction to entertain the present application. He referred us to section 47(1) of the Land Disputes Courts Act, Chapter 216 of the Revised Laws which categorically stipulates:-

*"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.]

To fortify his contention, the learned counsel for the respondent referred to us the unreported Civil Application No. 184/11 of 2017 – **Tumsifu Anasi Maresi Vs. Luhende Jumanne Selemani and Another.**

On his part, Mr. Kimaro did not have anything of material substance in reply aside from insisting that the applicant has a right to seek a second bite.

Having heard counsel from either side, we entirely subscribe to the submissions of the learned counsel for the respondent. Indeed, aside from the referred case of **Tumsifu**, this Court has, upon a plethora of decisions, stated that, in terms of the clear provisions of section 47(1) of Chapter 216, the Court of Appeal lacks jurisdiction to grant leave to appeal in Land matters falling under that provision (see, for instance, the unreported MSH Civil Application No. 9 of 2013 – **Felista John Mwenda Vs Elizabeth Lyimo.**)

All said, we are constrained to uphold the preliminary point of objection and accordingly, the application is hereby struck out with costs for incompetence.

DATED at **DAR ES SALAAM** this 23rd day of July, 2018.

K. M. MUSSA
JUSTICE OF APPEAL

S. A. LILA
JUSTICE OF APPEAL

R. K. MKUYE
JUSTICE OF APPEAL

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


B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL