

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

**(CORAM: MUSSA, J.A, MUGASHA, J.A And MKUYE, J.A)**

**CIVIL APPLICATION NO. 3/08 OF 2016**

**MASATO MANYAMA ..... APPLICANT**

**VERSUS**

**LUSHAMBA VILLAGE COUNCIL ..... RESPONDENT**

**(Application from the decision of the High Court of Tanzania  
at Mwanza)**

**(Mutungi, J.)**

**dated the 26<sup>th</sup> day of June, 2014**

**in**

**Land Appeal No. 73 of 2012**

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**RULING OF THE COURT**

25<sup>th</sup> & 27<sup>th</sup> April, 2018

**MKUYE, J.A.:**

The applicant, Masato Manyama, has brought this application seeking to be granted leave to appeal to the Court of Appeal against the judgment of the High Court (Mutungi, J.) dated 26/6/2014 in Land Appeal No. 73 of 2012. Initially the applicant had lodged a similar application to the High Court (Gwae, J.) through Misc. Land Application No. 113 of 2014 but was refused. The application is by way of Notice of Motion made under section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 (the AJA) and Rule 45 (b) of the Tanzania Court of Appeal Rules, 2009 (the Rules). It

is supported by the affidavit sworn on 3/3/2016 by Masato Manyama, the applicant.

The respondent, Lushamba Village Council did not file an affidavit in reply.

At the hearing of the application on 25/4/2018, the applicant fended himself and unrepresented; whereas the respondent was represented by Ms. Magreth Peter, the learned Solicitor for Buchosa District Council.

When the applicant was called upon to argue the application he did not say anything substantial, more so, as he seemed not to understand the matter he had brought before the Court. We advised him that we would make our determination on the basis of his affidavit and the submission which he had filed on 20/4/2016.

What we gathered from the affidavital averments and the submission in support of the application is that, **one**, he had initially, before the High Court applied for leave to appeal to this Court vide Misc. Land Application No 113 of 2014 but was refused. **Two**, that there are sufficient points of law for consideration by the Court including:-

- That, the applicant had lawfully bought the suit land from its original owner Lubazoha Mungonya in the 2000's years.

- That, the first appellate court failed to take into consideration the provisions of the Land Assessment of the Value of Land for Compensation Regulations, 2001 (G.N. 78 of 2001) which provide for compensation for unexhausted improvements, accommodation, loss of land profits, disturbance, transport and land interests.

When the respondent through Ms Peter was asked to respond, to our astonishment, she informed us that she was unable to respond because the Notice of Motion was not served to them. However, after it had been revealed through the record of appeal that service was effected through Lushamba Village Council on 31/3/2016, she said she had nothing to contribute.

The issue here is whether section 5 (1) (c) of the AJA and Rule 45 (b) of the Rules vests the Court with jurisdiction to determine an application for leave to appeal to the Court against the decision of the High Court (Mutungi, J.) in Land Appeal No. 73 of 2012 after the initial application under among other provisions, section 47 (1) of the Land Disputes Act, Cap. 216 R.E. 2002 (the LDC Act) was refused by the High Court.

We wish to take off by stating that the issue relating to leave to appeal on land related matters is governed under section 47 (1) of the LDC Act which states as follows:-

*"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, 1979."*

*[Emphasis added].*

Our understanding of the above provision is that, **one**, every decision of the High Court when exercising its original, revisional or appellate jurisdiction is appealable to the Court of Appeal provided there is a leave from the High Court to do so. **Two**, it is the High Court only which has exclusive jurisdiction to determine applications for leave to appeal to the Court of Appeal in land matters. **Three**, under the said provision, this Court has no concurrent jurisdiction with the High Court to determine applications for leave after the same has been refused by the High Court.

This position was expounded in the case of **Felista John Mwenda Vs. Elizabeth Lyimo**, (MSH), Civil Application No. 9 of 2013 (unreported) where this Court stated:-

*"The Court of Appeal, in terms of the clear provisions of section 47 (1) of Cap. 216 lacks jurisdiction to entertain the application. (See also – **Paulina Thomas Vs. Prosper John Mutayoba and Another**, Civil Application No. 77/8/2017 (unreported))*

The applicant in this application has relied upon the provisions of section 5 (1) (c) of the AJA and Rule 45 (b) of the Rules. It would appear that the applicant had an impression that the provisions are applicable since a land dispute is civil in nature or rather it is just like any civil matter before the Court. Section 5(1)(c) provides as follows:-

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

*(a) –*

*(b) –*

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

*[Emphasis added]*

Through our reading of the above provision, there is no doubt that it vests concurrent jurisdiction to the High Court and Court of Appeal to determine application for leave against every other decree, order, judgment, decision or finding of the High Court. However, where **there is any other written law** it cannot apply. And, in our view, such other written law which can be envisaged may include those which provide for specific procedure for a specific subject like section 47(1) of the LDC Act.

Likewise, Rule 45(b) of the Rules specifically provides for the period of 14 days after the decision within which an application for leave to appeal can be made. It also gives a room to a person whose application for leave is refused by the High Court, to make another application to the Court within 14 days from the date of such refusal. In other words it permits an application for leave on a second bite. The said Rule provides as follows:

*"45. In Civil matters –*

*(a) –*

***(b)** Where an appeal lies with the leave of the Court, application for leave shall be made in the manner prescribed in Rule 49 and 50 and within 14 days of the decision against which it is desired to appeal or, where the application for leave has been*

***made to the High Court and refused, within fourteen days of that refusal.”***

[Emphasis added]

As alluded earlier on, in the matter at hand, the applicant has predicated his application under section 5(1)(c) of AJA and Rule 45(1)(b) of the Rules. However, we are of the view that, the Court lacks such jurisdiction. We say so because, as we have stated earlier on, section 47 (1) of the LDC Act vests exclusive jurisdiction to the High Court on matters of leave to appeal to the Court of Appeal. On top of that section 5 (1) (c) of the AJA together with Rule 45(b) of the Rules do not confer jurisdiction to the Court of Appeal to entertain an application for leave to appeal against the decision of the High Court on a matter which is regulated under such other written law such as the one at hand.

In the case of **Tumsifu Anasi Maresi Vs. Luhende Jumanne Selemani And Another**, TBR Civil Application No. 184/11 of 2017 (unreported) in an endeavor to emphasize the stance that section 5 (1) (c) of the AJA cannot be relied upon to apply for leave to appeal against the decision of the High Court in a land case, the Court quoted with approval the case of **Nuru Omary Ligatwike Vs. Kipwele Ndunguru**, Civil

Application No. 42 of 2015 (CAT) (unreported) in which the Court stated as follows:-

*"It is apparent that the applicant believes the phrase "leave of the High Court or of the Court of Appeal" gives an applicant choice of forum to apply for leave to appeal from the decision of the High Court sitting as a "Land Court" under the Land Courts Act...The applicant should not have come to this Court by way of section 5 (1) (c) of the AJA because section 47 (1) of the Land Act exclusively vests that jurisdiction the High Court..."*

*[Emphasis added]*

This position was reiterated in the recently decided case **Yusufu Juma Risasi Vs. Anderson Julius Bicha**, Civil Application No. 176/11 of 2017 (TB) (unreported) where the Court was faced with a similar situation in which the applicant filed an application for leave to appeal under section 5 (1) (c) of AJA following its refusal at the High Court (Land Division). In that case, the Court stated as hereunder:-

*"...Our answer is in the negative because: **one**, under section 47 (1) of LDCA, the High Court is vested with exclusive jurisdiction on matters of leave to appeal to the Court. **Two**, the Court does*



*not have jurisdiction to entertain an application for leave to appeal against the decision of the High Court under section 47 (1) of LDCA and there is no remedy under section 5 (1) (c) of AJA. (See **Felista John Mwenda Vs. Elizabeth Lyimo**, Civil Application No. 9 of 2016 and **Elizabeth Losujaki Vs. Agness Losujaki and Another**, Civil Application No. 99 of 2016 (both unreported). **Lastly** in the case of **Tumsifu Anasi Maresi Vs. Luhende Jumanne**, Civil Application No. 184/11/2017, we clearly stated that the remedy of refused by the High Court for leave to appeal is to appeal to the Court....”*

*[Emphasis added]*

Even in this case, we fully subscribed to the decisions we have cited hereinabove that, the Court does not have jurisdiction to determine an application for leave to appeal against the decision of the High Court under section 47(1) of the LDC Act. We emphasize that, after the applicant’s initial application for leave was refused by the High Court, he did not have a room to come to this Court on a second bite but his only remedy was to appeal to the Court against the decision which refused to grant him leave.

In the event, we find the application to be not properly before the Court and we hereby, accordingly strike it out. We do not make any order as to costs.


**DATED** at **MWANZA** this 2<sup>th</sup> day of April, 2018.

K. M. MUSSA  
**JUSTICE OF APPEAL**

S. E. A. MUGASHA  
**JUSTICE OF APPEAL**

R. K. MKUYE  
**JUSTICE OF APPEAL**

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

  
P. W. BAMPIKYA  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**