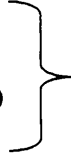


**IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA**

(CORAM: JUMA, C.J., NDIKA, J.A. And LEVIRA, J.A.)

CIVIL APPLICATION NO. 73/08 OF 2018

- 1. CHACHA MOTE**
- 2. JUMA KICHERI**
- 3. MARWA KYEYO**



.....**APPLICANTS**

VERSUS

MKAMI MATINDERESPONDENT

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

(Mlacha, J.)

dated the 16th September, 2016

in

Land Appeal No. 107 of 2015

RULING OF THE COURT

25th & 27th March, 2020

LEVIRA, J.A.:

The applicants, Chacha Mote, Juma Kicheri and Marwa Kyeyo have lodged this application for leave of the Court to amend their joint notice of appeal filed on 28th August, 2016 from the Judgment and Decree of the High Court of Tanzania at Mwanza (Mlacha, J.) in Land Appeal No. 107 of 2015 dated 16th September, 2016. Together with the notice motion, the applicants filed a joint affidavit which they deposed to on 9th February,

2018. The respondent, Mkami Matinde, did not file any affidavit in reply to contest applicants' averments in their affidavit.

When the matter came up before us for hearing on 25th March, 2020, the parties appeared in person, self-represented. Before the commencement of the hearing the respondent rose and claimed that he was not served with the application and therefore, prayed that the hearing of the matter be adjourned for him to be served and prepare for hearing after consultation with his advocate. We dismissed his prayer as we were satisfied that he rejected service of the application when it was made on him by Mr. Paul Gabriel Mwikabe, Village Executive officer (VEO) of Mekomariro Village in Bunda District on 15th February, 2018 as per the affidavit of the said Mr. Mwikabe sworn on 28th March, 2018.

Arguing in support of the application on behalf of his co-applicants, the third applicant stated that the applicants were not satisfied with the decision of the High Court in Land Appeal No. 107 of 2015 as a result, they intend to appeal to the Court. It was his further contention that, on 28th September, 2016 they lodged their notice of intention to appeal in the Court's Sub Registry in Mwanza indicating the names of the intending five appellants who were also the appellants in Land Appeal No. 107 of 2015.

The said appellants are: Chacha Mote, Mayoni Chacha, Nchota Chacha Marera, Juma Kicheri and Marwa Kyeyo. However, for some unknown reasons Mayoni Chacha and Nchota Chacha through Misc. Land Application No. 245 of 2016 in the High Court declared that they are no longer interested to pursue the intended appeal. That contention is also reflected under paragraph three of the supporting affidavit. For that reason, the applicants seek leave to amend their notice of appeal to omit the names of the said two then intending appellants.

In reply, the respondent opposed the application arguing that the names of the said two intended appellants were already removed through the decision of the High Court (Ebrahim, J.) in Misc. Land Application No. 245 of 2016. In addition, to prove that those two names were already removed, he showed us a copy of the Ruling of the High Court (Gwae, J.) in Misc. Land Application No. 136 of 2017 arising from High Court Land Appeal No. 107 of 2015 containing only three names of applicants who are also the applicants herein. Basing on that argument, he prayed that the application be dismissed.

Rejoining, the third applicant acknowledged the existence of the decision of the High Court in Misc. Land Application No. 136 of 2017. He

also conceded that the three applicants herein were also the applicants in that High Court Application. As for him, Misc. Land Application No. 136 of 2017 was a continuation of Misc. Land Case No. 245 of 2016 and that the said two applications are quite different from the current application. He therefore reiterated his earlier prayer that, this application be allowed.

We have examined the notice of motion as well as the supporting affidavit and taken account of the arguments by both sides. However, we wish to state at the outset that, our decision is focusing on the thrust of the application as presented before us and not otherwise. In essence, the applicants seek to amend the joint notice of appeal they had lodged so that the names of the second and third intended appellants indicated thereon are omitted from it as they are no longer interested to appeal against the Judgment and Decree of the High Court alluded to earlier.

Having examined the arguments by the parties, notice of motion along with the supporting affidavit of the applicants, we are satisfied that the application is meritorious. The respondent's objection was raised out of context and it was as good as if the application was not contested, more so as the respondent did not file any affidavit in reply as indicated above. Accordingly, we grant the requested leave in terms of Rule 111 of the

Tanzania Court of Appeal Rules, 2009 and order the applicants to lodge an amended notice of appeal within thirty days. The copy of said amended notice of appeal should be served on the respondent within fourteen days after it is lodged.

We so order.

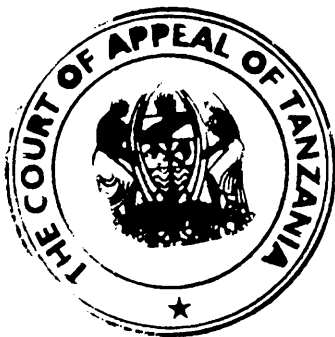
DATED at **MWANZA** this 26th day of March, 2020.


I.H. JUMA
CHIEF JUSTICE

G. A. M. NDIKA
JUSTICE OF APPEAL

M. C. LEVIRA
JUSTICE OF APPEAL

The ruling delivered this 27th day of March, 2020 in the presence of Applicants and respondent in person is hereby certified as a true copy of the original.




S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL