

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

**CIVIL APPLICATION NO. 117/06 OF 2022**

**PETRO ROBERT MYAVILWA ..... APPLICANT**

**VERSUS**

**ZERA MYAVILWA .....1<sup>ST</sup> RESPONDENT**

**ERICA MYAVILWA.....2<sup>ND</sup> RESPOINDENT**

**[Application for Extension of time to apply for leave to appeal to Court  
against the Judgment of the High Court of Tanzania at Mbeya]**

**(Utamwa, J.)**

**dated the 4<sup>th</sup> day of May, 2020**

**in**

**Probate Appeal No. 1 of 2019**

.....

**RULING**

6<sup>th</sup> & 13<sup>th</sup> December, 2023

**KAIRO, J.A.:**

Before me is an application for extension of time to file leave to appeal to this Court out of time. It has been preferred under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) on the grounds which can conveniently be paraphrased as follows:-

- (i) Delay to get a correct certificate of delay from the High Court.*
- (ii) The existence of point of law to the effect that the applicant was denied right to be heard when the Primary Court added the co-administrator.*

At the hearing of this application the applicant was represented by Mr. Masuna Gabriel Kunju, learned advocate who was accompanied by the applicant in person. On the other side, Mr. Alfredy Chapa, learned counsel appeared for both respondents.

Initially the application was scheduled for hearing on 5<sup>th</sup> December, 2023. Before proceeding with the hearing, the Court wanted to know whether or not the application is still tenable for **one**; in the wake of the amendment of section 5 of the Appellate Jurisdiction Act, Cap 141 (the AJA) brought by section 10 of the Legal Sector Laws (Miscellaneous Amendments) Act No. 11 of 2023 which came into effect on 1<sup>st</sup> December, 2023, and **two**; the propriety of the leave requirement for the matter originated from the Primary Court.

Both counsel prayed for time to go through the Legal Sector Laws (Miscellaneous Amendments) Act, 2023 as they were not aware of the changes. Mr. Kunju added that the time, if given will also enable him to make consultation with his senior advocate who was handling the matter and who according to him was away on safari. By consensus therefore, the hearing of the application was adjourned to the next day that is, 6<sup>th</sup> December, 2023.

Briefly, the background of this dispute as gathered from the record is that, the applicant requested to be appointed as an administrator of the estate of the late Robert Myavilwa vide Probate Cause No. 7 of 2014 instituted at the Primary Court of Mbarali District at Chimala. It is on record that, apart from the applicant, the court also appointed another person as co-administrator. The applicant was displeased by the move and contemplated to appeal. However, he found himself time barred. He unsuccessfully lodged application No. 11 of 2018 before the District Court of Mbarali District, at Rujewa seeking an extension of time to appeal out of time. He was further aggrieved and decided to appeal to the High Court in Probate Appeal No. 1 of 2019, but again in vain. Still adamant, the applicant lodged the notice of appeal and timely requested for necessary documents for appeal purpose.

In his affidavit the applicant deposed that he applied for leave to appeal to Court at the High Court in application No. 18 of 2020 which was refused on 18<sup>th</sup> November, 2020. He thereafter applied to be supplied with the copies of the proceedings, ruling, and drawn order which were supplied to him on 26<sup>th</sup> October, 2021 together with the certificate of delay. However, he noted to be out of time. He therefore filed this application seeking an extension of time to file leave to appeal to Court.

Addressing the Court on the points raised by the Court *suo mottu*, Mr. Kunju was of the opinion that the amendment of section 5 of the AJA had nothing to do with the present application. It was his contention that the said changes had no bearing to the application for leave before the Court, as such, the Court should proceed with the determination of the application.

Regarding the propriety of this application having in mind that the dispute started at the primary court, Mr. Kunju contended that he was aware of the legal requirement of applying and being granted a certificate on point of law for such disputes. He also conceded that the matter at hand has got its origin at the Primary court, and thus a certificate on point of law was required though the applicant has not sought for one. He however contended that the grant of leave is as well necessary in the matter at hand and that is the reason why this application is before Court for determination. According to him, both leave and certificate on point of law are pre-requisite before the applicant can lodge his appeal to Court. He thus prayed the Court to grant the application.

Reacting on the issue whether leave to appeal to Court is required for this application having been originated from the Primary court, Mr. Chapa was of the view that the applicant was required to have only a

certificate on point of law. He contended that even Application No. 18 of 2020 before the High Court seeking for leave to appeal to Court was a misconception. He argued that the law is long settled that certificate on point of law is a pre requisite for such matters so that the High Court can certify that there is a point of law involved for the Court's the attention on appeal, while leave to appeal to Court is sought for the matters started at the District Court or District Land and Housing Tribunal. He concluded that, since Mr. Kunju admitted that there was no application for certificate on point of law sought, it goes that, the said application for leave at the High Court was misconceived, and in the same vein, the application at hand is a misconception as well. As a remedy, he prayed the Court to dismiss this application.

As regards the consequence of the changes brought by section 10 the Legal Sector Laws (Miscellaneous Amendments) Act 2023, Mr. Chapa was so brief. He submitted that the said changes have rendered the leave requirement unnecessary, and therefore this application before the Court has been outdone by the changes and ought to be struck out.

I will start with the amendments brought by the Legal Sector Laws (Miscellaneous Amendments) Act No. 11 of 2023, particularly section 10 which amended section 5 of the AJA effective 1<sup>st</sup> December, 2023. For

ease of understanding, I will reproduce the amendment concerned as hereunder: -

*"Sec 10 The principal Act is amended in section 5*

*(a) By deleting subsection (1) and substituting for it the following:*

*"(1) In civil proceedings, except where any other written law provides otherwise, an appeal shall lie to the Court of Appeal against every order or decree, including an ex-parte or preliminary decree made by the High Court, in the exercise of its original, appellate or revisional jurisdiction"*

It is my interpretation, basing on the above exposition that, the changes have done away with leave requirement for one to appeal to Court against the decision of the High Court regardless of whether the impugned decision is an order, decree, an *ex-parte* decree or a preliminary decree when exercising its original, appellate or revisional jurisdiction. In other words, obtaining leave has ceased to be a requisite before one can appeal to Court effective the 1<sup>st</sup> December, 2023.

As alluded to earlier, the application at hand seeks for extension of time to apply for leave to appeal to Court so as to challenge the decree of the High Court when exercising its appellate jurisdiction in Probate

Appeal No. 1 of 2018. The changes, being procedural law which its applicability has retrospective effect, has a bearing to the application at hand in my view. As rightly submitted by Mr. Chapa, leave is no longer a requirement at the wake of the said amendment. As such, this application has been overtaken by event and the only remedy is to strike it out as I hereby do. No cost is awarded as the move was caused by the operation of the law.

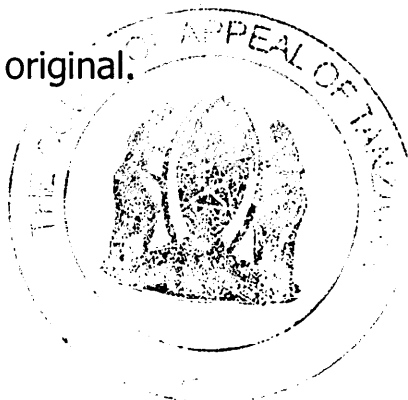
With the above finding, continuing dealing with other arguments will, in my view, serve no purpose.


It is so ordered.

**DATED at Mbeya** this 12<sup>th</sup> day of December, 2023.

L. G. KAIRO  
**JUSTICE OF APPEAL**

The Ruling delivered this 13<sup>th</sup> day of December, 2023 in the presence of Applicant appeared in person unrepresented and Mr. Boniface Mwabukusi, learned Advocate holding brief for Mr. Alfred Chapa, learned advocate for the respondents, is hereby certified as a true copy of the original.



  
S. P. MWAISEJE  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**