

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF ARUSHA  
AT ARUSHA**

**MISC. CIVIL APPLICATION NO. 74 OF 2017**

(Based on the High Court of the United Republic of Tanzania Arusha District Registry Misc. Civil Review No. 5 of 2016, which in turn was based on the High Court of the United Republic of Tanzania Arusha District Registry Misc. Land Appeal No. 7 of 2016)

**1. WILLIAM MEMURUTI.....FIRST APPLICANT**

**2. DR. RONILICK MCHAMI.....SECOND APPLICANT**

**VERSUS**

**LONGISHU MEMURUTI.....RESPONDENT**

**RULING**

**DR. OPIYO, J.**

This is a ruling on preliminary objection raised by the respondent that the second applicant (Dr. Ronilick Mchami) has *no locus standi* in this application and to any appeal thereto, since he was not a party in whatsoever to the previous suit either determined by this honourable court (including Misc. Civil Review No /2017) OR subordinate Court/ Tribunal thereto against the respondent herein.

In his Written Submission, respondent submitted that, the respondent was the applicant in Misc. Civil Review No 05/2016 against William Memuruti, the first applicant herein of which the said application ended on the respondent's favor after the court discovered that the second applicant who is the counsel for the 1<sup>st</sup> applicant misled the court that the respondent had filed his appeal out of time while he knew the same was wrong. Basing on that, the court ordered the applicant counsel to pay the costs of the suit in person, which resulted into this application and subsequent preliminary objection thereof.

It was further submitted that, upon being served with the application, the respondent discovered that, the 2<sup>nd</sup> applicant who is an advocate was representing the 1<sup>st</sup> applicant but later he turned to be the applicant while he had never been the party to the original suit, hence he has no capacity to appeal. It was contended that, it is known that the one who may appeal to challenge the decision of the court below must be a party to the original suit. Now in this application, the applicants are seeking for extension of time to file an application for leave to appeal to the Court of Appeal against the order of this court in Misc. Civil Review No 05/2016 while the second applicant had never been a party to the original application.

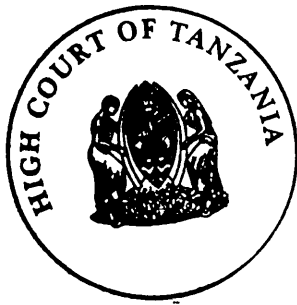
It was his submission that, since the second applicant is not a party to the original suit he had no right to appeal, therefore the application for extension of time to file leave to the Court of Appeal should be dismissed with costs.

On the other side, it was submitted by Dr. Mchami that, in as much as he was not a party in the Civil Review No. 5 of 2016, but Hon. Justice Maghimbi in her Ruling in Civil Review No. 5 of 2016 ordered that, he should pay the costs of the said Civil Review No. 5 of 2016. He was condemned unheard to pay costs to the Respondent, the fact which very much aggrieved him, and he has already has already filed a notice of appeal to proceed to the Court of Appeal of Tanzania which was duly served to the then Advocate for the Respondent. It was his contention that, he has a *locus stand* in Misc. Civil Application No 74 of 2017 as he has a constitutional right under Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977 to appeal against the order prepared and delivered against him by the Hon. Justice Maghimbi. He prayed the court to overrule the respondent's preliminary objection with costs.

The issue before me is straight forward and need not detain me. The parties in the application for review No O5/2016, Before Hon Maghimbi, J. were Longishu Memuruti as the applicant and William Memuruti as respondent. The second applicant who is Dr. Mchami was an advocate for the respondent. He was not a party to the original application. Since he was not a party, he has no right whatsoever to Appeal to the Court of Appeal to challenge the decision of the High Court, as for a person to challenge the decision of the lower court by way of appeal, he must be a party to the original suit or application as the case may be. I am very much aware that the right to appeal is the Constitutional right, but the same need to be exercised in accordance to the law of this country. If the second applicant (Dr. Mchami) was aggrieved by the decision of this court, he should resort to the appropriate avenue to present his complaint before a proper forum instead of opting to introduce himself through desire to appeal in the matter which did not concern him right

from the beginning. And surprisingly joining a party whose desire to appeal may not necessarily be on the same grounds as his, the first applicant.

That being the case, I sustain the preliminary objection and struck out the application. I make no order as to costs.



A handwritten signature in black ink, appearing to be "M. Opiyo", is written over a horizontal line.

**DR. M. OPIYO,**

**JUDGE**

**27/07/2018**