

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)**

**IN THE DISTRICT REGISTRY OF TANGA**

**AT TANGA**

**LAND CASE APPLICATION No. 69 OF 2020**

*(Arising from the decision of the District Land and Housing Tribunal for Lushoto at  
Lushoto in Land Application No. 13 of 2017)*

**MUSA BILALI JAMBIA ..... APPLICANT**

**Versus**

**THE REGISTRED TRUSTEES OF THE NORTHERN  
EAST DIOCESS OF ELCT .....RESPONDENT**

**RULING**

**22.07.2021 & 22.07.2021**

**F.H. Mtulya, J.:**

An Application for leave to prefer an appeal to the Court of Appeal was logged in this court on 22<sup>nd</sup> October 2020 in **Misc. Land Application No. 69 of 2020** (the Application). The Application was preferred under sections 47 (2) of the **Land Disputes Courts Act** [Cap. 216 R. E. 2019] and 5 (1) (c) of the **Appellate Jurisdiction Act** [Cap 141 R.E. 2019]. Reading the contents registered in the Applicant's learned counsel Affidavit, they depict that the Applicant is seeking leave to access our superior court to dispute the decision of the **Resident Magistrates' Court** (Extended Jurisdiction) in **Land**

**Case Appeal no. 3 of 2020.** The main complaints of the Applicant are in four levels as displayed at the fifth (5<sup>th</sup>) paragraph of the Affidavit.

However, today afternoon when the Application was scheduled for hearing, the Applicant's learned counsel Ms. Elisia Paul, briefly submitted on consideration number one (1) in four (4) issues registered in the Affidavit to persuade this court to decide in favour of the Applicant. In the complaint, the Applicant states that the Resident Magistrates' Court (Extended Jurisdiction) resolved a matter which was raised and determined *suo moto* and disregarded registered four grounds of appeal. To justify her submission Ms. Paul cited pages 2 & 3 of the judgment.

I have had an opportunity to read the judgment of the Resident Magistrates' Court (Extended Jurisdiction) and found four (4) issues raised by the Appellant at page 3 which were condensed into (2) by the learned Resident Magistrate (with Extended Jurisdiction) at page 3. However, reading of the two (2) raised issues at page 3, one (1) of the issues in number two (2), was a completely new issue and was raised and determined by the Resident Magistrates' Court (Extended Jurisdiction) without affording the parties an opportunity

to be heard. Today, Ms. Paul states that, that is a breach of Article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] (the Constitution) and prays for leave to access the Court of Appeal in search of rectification.

To my opinion, when there are allegations of irregularities in lower courts or tribunals, this court may grant leave to the applicant to access our superior court in judicial hierarchy, the Court of Appeal, to resolve the complained uncertainties. Reading page 2 and 3 of the Resident Magistrates' Court (Extended Jurisdiction) judgment, I am moved to believe that the Applicant has genuine cause to be granted leave to access the Court of Appeal in resolving the matter. In any case, this court cherishes easy access to court and fair hearing between the parties as enacted in Articles 13 (6) (a) & 107A of the Constitution.

Having said so, I have decided to grant the Applicant leave to access the Court of Appeal in accordance with the laws regulating appeals from this court to the Court of Appeal. I award no costs in this Application as the Respondent declined to appear to protest the Application.

It is so ordered.



A handwritten signature in blue ink, appearing to read "F. H. Mtulya", is written over the seal.

F. H. Mtulya

**Judge**

22.07.2021

This ruling is delivered under the seal of this court in Chambers in the presence of the Applicant's learned counsel Ms. Elisia Paul and in absence of the Respondent.



A handwritten signature in blue ink, appearing to read "F. H. Mtulya", is written over the seal.

F.H. Mtulya

**Judge**

22.07.2021