

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

APPELLATE JURISDICTION

MISC. LAND APPLICATION NO. 45 OF 2021

(Arising from Land Appeal No. 21 of 2020 of the High Court of Kigoma, Emanating from the judgment of the District Land and Housing Tribunal at Kigoma in Land Application No. 106/2019)

ASHA MATULIKE..... APPLICANT

VERSUS

ELIDADI ELIAS MATHAYO.....RESPONDENT

RULING

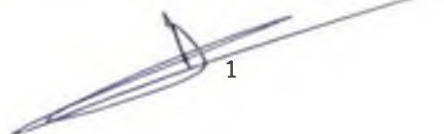
29/9/2021 & 29/9/2021

A. MATUMA, J

This application is incompetent for having been filed without being accompanied with the impugned judgment.

Both advocates Mr. Sogomba and Rumenyela for the applicant and Respondent respectively have agreed that this application is incompetent for it can not be heard without such impugned judgment.

I agree with the leaned advocates for both parties that in the absence of the impugned judgment this application cannot successfully be heard.



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It is from such impugned judgement the court is better positioned to scrutiny the grounds upon which leave to appeal is sought.

In the absence of the impugned judgment, the grounds upon which leave is sought remains bare allegations as they are not born out of records.

Mr. Sogomba learned advocate for the applicant prayed to withdraw this application with leave to refile but a party cannot be allowed to withdraw his case upon their being a point of law raised by the opponent party or by the court suo motto. See the case of **Neema Godfrey versus Asia Onesmo Mlanzi, Misc. Civil Application No. 14 of 2020**, High Court at Kigoma and **Harish Arubaranjina (By his Attorney Ajar Patel) versus Abdulrazak Jussa Suleiman** (2004) TLR 343.

In the case of Neema Godfrey supra this court ruled;

"Withdraw could only be granted if the Applicant would have noted the defect herself.

Withdraw is not granted when preliminary objection is lodged or when the court has raised an issue suo motto against the application. This is to avoid the possibilities of a party to pre - empty the objection or the raised issue".

In the circumstances, I will not grant the prayer to withdraw with leave to refile. I rather struck out this application for being incompetent.

No orders for costs.



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It is so ordered.

A. MATUMA

JUDGE

29/9/2021

