

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA**

MISCELENEOUS LAND APPLICATION NO. 91 OF 2020

LAILA GODFREY CHIHEKWE

(Under the Authorized Agent Abdallah I. Pazi)..... APPLICANT

VERSUS

- 1. REHEMA ALLY MPORE**
- 2. KAMALI ALLY YUSUFU**
- 3. SHARIFA ALLY YUSUFU MPORE**
- 4. NARGIS ALLY YUSUF MPORE**
- 5. IBRAHIM ALLY MPORE**
- 6. BALBIR SING SAIN**

.....RESPONDENTS

(Application from the Ruling of the High Court Tanzania at Dodoma)

Dated 10th day of October, 2020

In

Land Case No. 08 of 2017

RULING

20th May & 17th June, 2022

MDEMU, J:.

This is an application for leave to appeal to the Court of Appeal preferred under provisions of Sections 5(1) (c) (2)(b) of the Appellate Jurisdiction Act, Cap. 141 (the AJA) and Rule 45(a) of the Court of Appeal Rules, 2009. It is supported by an affidavit deposed by the Applicant one Laila Godfrey Chihekwe. Ibrahim Ally Mpore and Balbir Singh Saini, the 5th and 6th Respondents respectively contested the application by raising a preliminary objection thereof thus: -

1. The application is untenable in law hence incurable defective for contravening the provisions of sections 47(1) of the Land Disputes Courts Act, Cap. 216 R.E 2019.

Parties herein prayed to proceed by way of written submissions. The Applicant was represented by Mr. Abdallah Ibrahim Pazi whereas the fifth and sixth Respondents were represented by Mr. Uphoro Mangesho, learned Advocate. Parties complied to the order of preference in filing their written submissions.

It was the Respondents' submissions filed on 29th of May, 2022 that, the legislation cited by the Applicant in her chamber summons, that is, the Courts (Land Disputes Settlements) Act, 2002 R.E 2019 is nonexistence but rather it is the Land Disputes Courts Act, Cap. 216 R.E 2019. He argued that, Section 47(1) of Cap.216 require a person aggrieved by the decision of the High Court in exercise of its original jurisdiction to appeal to the Court of Appeal in accordance with the provisions of the Appellate Jurisdiction Act. He quoted section 5(1) (c) of AJA such that, in civil proceedings, except where other written laws provide otherwise, an appeal to the Court of Appeal have to be preceded by leave of the High Court or Court of Appeal. He added that, since in the case at hand Section 47(1) of Cap. 216 provide for procedures to appeal against the decision of the High Court in exercise of its original jurisdiction,

then Section 5(1) (c) of the AJA is inapplicable. He bolstered his position by citing the case of **Lala Wino vs. Karatu District Council, Civil Application No. 132 of 2018** (unreported).

In reply, the Applicant stated in his written submissions filed on 20th of May, 2022 that, in the chamber summons, the Land Disputes Courts Act was never cited as stated by the Respondents. She stated to have moved the Court under Sections 5(1) (c), 5(2) (b) of the AJA and Rule 45 (a) of the Court of Appeal Rules, 2009. It was his argument further that, Section 47(1) of Cap. 216 alleged to have been contravened by the Applicant dictates two things; **firstly**, it is in all appeals against the decision of High Court including Judgement, ruling and findings in exercise of its original jurisdiction and **secondly**, application of procedures stipulated in the AJA.

He thus stated; as application before this Court emanates from the ruling of the High Court on preliminary objection, the issue is whether appeal against that the ruling on the preliminary objection require leave. In this, he argued that, land appeal from High Court which does not require leave are those against decree, ex-parte decree and preliminary decree and other orders under section 5(b) of the AJA. He added that, as the appeal subject to this application is premised on a ruling and drawn order emanated from the preliminary objection in Land Case No. 8 of

2019, then the same do not fall under section 5(1) (a) (b) of the AJA hence, require leave of this Court to appeal to the Court of Appeal. He cited the cases of **Freeman Aikael Mbowe and the Attorney General vs. Alex O. Lema [2004] T.L.R 85; Boniface Anyisile Mwabukusi vs. Atupele Fredy Mwakibete, the Returning Officer Busikelo Constituency and the Attorney General, Civil Appeal No. 46 of 2021; Fatuma Khatibu vs. the Treasury Registrar, Civil Appeal No. 397 of 2020** (both unreported).

He thus distinguished the case of **Lala Wino vs. Karatu District Council** (supra) from this application as in the latter, the issue was on the competence of the application for leave to appeal against the judgement and decree of the High Court in Land Case No. 71 of 2014. However, in the case at hand, the Applicant is seeking leave to appeal against the ruling and drawn order on preliminary objection in which, there is neither decree nor judgement issued by the trial court.

Having considered the parties' submissions, the issue is whether an appeal against the ruling of this court in Land Case No. 8 of 2019 require leave to appeal to the Court of Appeal. On this, section 5(1) of the AJA provides as follows: -

5(1) In civil proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal-

- (a) *Against every decree including an ex-parte or preliminary decree made by the High Court in a suit under the Civil Procedure Code, in the exercise of its original jurisdiction;*
- (b) *Against the following orders of the High Court made under its original jurisdiction, that is to say-*
- (i) *An order superseding an arbitration where the award has not been completed within the period allowed by the High Court,*
 - (ii) *An order on an award stated in the form of a special case,*
 - (iii) *An order modifying or correcting an award,*
 - (iv) *An order filing or refusing to file an agreement to refer to arbitration,*
 - (v) *An order staying or refusing to stay a suit where there is an agreement to refer to arbitration,*
 - (vi) *An order filing or refusing to file an award in an arbitration without the intervention of the High Court,*
 - (vii) *An order under section 95 of the civil procedure code, which relates to the award of compensation where an arrest or a temporary injunction is granted*
 - (viii) *An order under any provisions of civil procedure Code imposing a fine or directing the arrest or detention in civil prison, of any*

person, except where the arrest or detention is in execution of a decree;

(ix) Any other order specified in rule 1 of Order XLIII in the Civil Procedure Code or in any rule of the High Court amending, or in substitution for, the rule;

*(c) with the leave of the High Court or the Court of Appeal, against **every other** decree, **order**, judgment, decision or finding of the High Court. (emphasis is mine)*

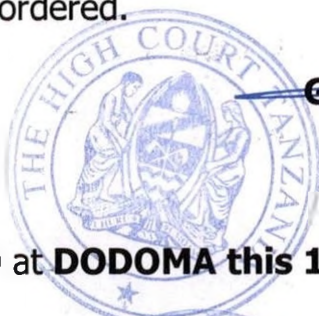
In the case of **Tanzania Breweries Limited vs. Leo Kobelo, Civil Appel No. 17 of 2016** (unreported), the Court of Appeal stated that, Section 5 (1) (a) and (b) of the AJA specifies types of decisions which are appealable as of right and those decisions which require leave of the High Court or the Court of Appeal as per paragraph (c) of subsection 1 of the same section.

That being the position, I find the ruling subject to this application do not follow under either section 5(1) (a) or (b) of the AJA rather it follows under section 5(1) (c) of the same Act since it is an order in which, the Applicant has no automatic right of appeal. In the case of **Fatuma Khatibu vs. the Treasury Registrar** (supra), at page 9, the Court of Appeal had the following observation regarding this assertion:

*The appeal at hand emanates from the decision of the High Court dismissing the application for extension of time to file an application for review against the ruling and drawn order issued by Mujulizi J. The order refusing to extend time, in our view, was any other order which falls under section 5(1)(c) of the AJA. (See also **Boniface Anyisile Mwabukusi v. Atupele Fredy Mwakibete and Two Others**, Civil Appeal No. 46 of 2021 (unreported); This implies that, the Appellant was required to seek and obtain leave before lodging the appeal to this Court.*

That said and done, the preliminary objection raised has no merits and is accordingly overruled. Let an application for leave to appeal to the Court of Appeal be heard on merits.

It is so ordered.



Gerson J. Mdemu
JUDGE
17/06/2022

DATED at DODOMA this 17th day of June 2022



Gerson J. Mdemu
JUDGE
17/06 /2022