

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

MISC. LAND CASE APPLICATION NO. 94 OF 2020

(C/F Misc. Land Application No. 60 of 2018, Original H/C Land Case No. 60 of 2015)

ENOCK JACOB SAMBOTO1ST APPLICANT

FRANCIS URIO..... 2ND APPLICANT

SETH ZACHARIA..... 3RD APPLICANT

JACOB YOHANE..... 4TH APPLICANT

Versus

JESCA ENOCK AKYOO..... RESPONDENT

RULING

10th February & 25th March, 2022

MZUNA, J.

This is an application for leave to file an appeal before the Court of Appeal of Tanzania against the decision of this court (Hon Robert J) who disallowed application to set aside the expert judgment of this court in Land Case No. 60 of 2015.

The application which is by chamber summons has been preferred under Section 5(1)(c) of the Appellate Jurisdiction Act, [Cap. 141 R.E 2019], Rule 45(a) of the Tanzania Court of Appeal Rules, 2009 and Section 47(1) of the Land Disputes Courts Act, [Cap. 216 R.E. 2019]. It

Tanzania. He then relied on the filed affidavit to augment his submissions.

This fact had been strongly disputed by the respondent both in the counter affidavit as well as during her submissions that the applicants were aware on the date the judgment was delivered and that the alleged illegalities is a mere conjecture.

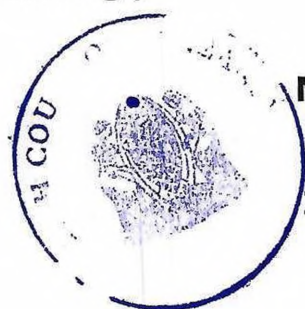
Although parties made lengthy submissions trying to convince court whether to allow or disallow the sought application, I deem it proper to look first on the provision of the law which the applicants cited to move the Court for the consideration of the application. Essentially Misc. Land Application No. 60 of 2020 traces its root from Land case No.60 of 2018 which was decided by Hon. Mwenempazi, J exercising original jurisdiction.

Section 47(1) of [Cap. 216 R.E 2019] which is the governing provision for appeals to the Court of Appeal in original land matters, gives us an answer whether this application is tenable in law? I am quite aware though, the issue to be looked into was not argued by the parties, it has been taken *suo motto* by the Court itself based on its relevancy and importance. I am also inspired by the decision in the case of **Tryphone Elias @ Ryphone Elias and Another versus Majaliwa**

the clear provision of Section 47(1) of Cap 216, above reproduced, Dr. Mchami need not have to lodge an application as this one because the appeal is automatic.

For the reasons above stated, this application is hereby rejected as it was improperly filed at the wrong court. I do so with usual consequences as to costs.

Order accordingly.



M. G. MZUNA,
JUDGE.
25/03/2022.