



THE JUDICIARY OF TANZANIA

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT SONGEA

(CORAM: HON. JAMES KARAYEMAHA)

MISCELLANEOUS LAND APPLICATION NO. 16 OF 2023

MAGINUS MBIRO COMPLAINANT / APPELLANT / APPLICANT / PLAINTIFF

VERSUS

VERONIKA MOYO RESPONDENT / DEFENDANT

RULING

Fly Notes

Application for leave to appeal to the Court of Appeal; whether or not this application is still acceptable in the wake of the amendment of section 5 of the Appellate Jurisdiction Act, Cap 141 (the AJA) brought by section 10 of the Legal Sector Laws (Miscellaneous Amendments) Act No. 11 of 2023 which came into effect on 1st December, 2023.

Facts

The applicant knocked on the District Land and Housing Tribunal's (hereinafter the DLHT) doors seeking to be declared the rightful owner of the suit land located at Kanjele "A" hamlet, Utwango Village in Namabengo Ward within Namtumbo District in Ruvuma Region vide Land Application No. 51 of 2022. It is contended that the respondent was gifted the suit land in 1976 by Medard Haule, his father-in-law. Since then, she started using it until 2019 when the applicant trespassed in claiming that he was given the suit land by the respondent's husband who by then was separated with her. That efforts to stop the appellant from trespassing into the suit land were in vain, hence she instituted a suit as alluded to above, claiming for the following reliefs: "a) a declaration that the suit land lawfully belongs to the respondent. a) A declaration that the appellant is the trespasser hence should vacate immediately. b) Payment of general damages. c) Costs of the suit. d) Any other reliefs this tribunal deems fit to grant." The respondent's suit was supported by herself as PW1 and three other witnesses, namely, Suzo Syprian Fuss, (PW2), Medard Arian Haule (PW3) and Ernest Flumence Haule (PW4). The applicant contested the suit in which in his written statement of defence (WSD) lodged at the trial tribunal, he denied the allegations and stated that he acquired the suit land from his father who used it since 1976 and gave it to him (applicant) in 1993. He stated further that in 2007 the respondent's husband hired it and returned it to him in 2019.

Ratio Decidendi

Amendments brought by the Legal Sector Laws (Miscellaneous Amendments) Act No. 11 of 2023, particularly section 10 which amended section 5 of the AJA effective 1st December, 2023 have done away with leave requirement for one to appeal to Court Appeal against the decision of the High Court regardless of whether the impugned decision is an order, decree, an ex-parte decree or a preliminary decree when exercising its original, appellate or revisional jurisdiction. -The amendment, being procedural law, its applicability has retrospective



effect held the Court of Appeal in unreported Civil Application No. 117/06 of 2022, Petro Robert Myavilwa v Zera Myavilwa and Erica Myavilwa

15th of April 2024

Hon. KARAYEMAHA.:

Pursuant to an application, preferred under the provisions of **Section 47(2)** of the Land Disputes Courts Act [Cap. 216 R.E. 2019], I am called upon to determine if this Court can be pleased to grant leave for the applicant to appeal to the Court of Appeal against the decision of this Court (Madeha, J) dated 27th July, 2023. vide.

The intended appeal is in respect of Land Appeal No. 37 of 2023, in which the applicant, featured as the respondent.

Briefly, the background of this dispute as collected from the record is that, the applicant knocked on the District Land and Housing Tribunal's (hereinafter the DLHT) doors seeking to be declared the rightful owner of the suit land located at Kanjele "A" hamlet, Utwango Village in Namabengo Ward within Namtumbo District in Ruvuma Region vide Land Application No. 51 of 2022. It is contended that the respondent was gifted the suit land in 1976 by Medard Haule, his father-in-law. Since then, she started using it until 2019 when the applicant trespassed in claiming that he was given the suit land by the respondent's husband who by then was separated with her. That efforts to stop the appellant from trespassing into the suit land were in vain, hence she instituted a suit as alluded to above, claiming for the following reliefs:

"a) a declaration that the suit land lawfully belongs to the respondent.

- 1. A declaration that the appellant is the trespasser hence should vacate immediately.*
- 2. Payment of general damages.*
- 3. Costs of the suit.*
- 4. Any other reliefs this tribunal deems fit to grant."*

The respondent's suit was supported by herself as PW1 and three other witnesses, namely, Suzo Syprian Fuss, (PW2), Medard Arian Haule (PW3) and Ernest Flumence Haule (PW4).

The applicant contested the suit in which in his written statement of defence (WSD) lodged at the trial tribunal, he denied the allegations and stated that he acquired the suit land from his father who used it since 1976 and gave it to him (applicant) in 1993. He stated further that in 2007 the respondent's husband hired it and returned it to him in 2019.

At the conclusion of the trial, having considered the evidence on record for both sides, the DLHT decided in favour of the applicant. Feeling that justice was perforated, the respondent appealed to this Court and emerged a successful party. The applicant was displeased by the decision of the High Court and desired to appeal. However, as a prelude to appealing to the Court of Appeal, the applicant ought to seek leave in this court.



The application met a serious resistance from the respondent who raised a point of preliminary objection (PO) to the effect that the appeal was hopelessly time barred. The respondent stated further the applicant failed to file a notice of intention to appeal within 14 days. This act, he contended, was contrary to the mandatory requirement of the provisions of rule 45(a) of the Court of Appeal Rules, 2009. Initially, parties were allowed to argue the PO by way of written submission. However, while composing the ruling, I came across the amendment of the law guiding the process of appealing to the Court of Appeal. Therefore, I was willing to know whether or not this application is still acceptable in the wake of the amendment of section 5 of the Appellate Jurisdiction Act, Cap 141 (the AJA) brought by section 10 of the Legal Sector Laws (Miscellaneous Amendments) Act No. 11 of 2023 which came into effect on 1st December, 2023. On how to go about it I invited parties to address this court on the *suo mottu* raised point.

Being lay persons, the applicant and respondents did not have much. They simply concurred with the court's observation and prayed to have the application struck out.

I propose to start with the amendments brought by the Legal Sector Laws (Miscellaneous Amendments) Act No. 11 of 2023, particularly section 10 which amended section 5 of the AJA effective 1st December, 2023. For ease of understanding, I will reproduce the amendment concerned as hereunder: -

"Section 10 The principal Act is amended in section 5 (a) By deleting subsection (1) and substituting for it the following: "(1) In civil proceedings, except where any other written law provides otherwise, an appeal shall lie to the Court of Appeal against every order or decree, including an ex-parte or preliminary decree made by the High Court, in the exercise of its original, appellate or revisional jurisdiction"

My construction of the foregoing exposition is that, the changes have done away with leave requirement for one to appeal to Court Appeal against the decision of the High Court regardless of whether the impugned decision is an order, decree, an *ex-parte* decree or a preliminary decree when exercising its original, appellate or revisional jurisdiction. In other words, obtaining leave ceased to be a requirement before one can appeal to Court Appeal effective the 1st December, 2023.

As introduced earlier, the present application seeks for leave to appeal to Court of Appeal so as to challenge the decree of the High Court when exercising its appellate jurisdiction in Land Appeal No. 37 of 2023. The respondent says the impending appeal is time barred. This might be true depending on what was the cause of delay. But, in a situation where the law has deprived the court with jurisdiction to try certain matters, even if the applicant has delayed to take action, the court vested with jurisdiction, has powers to declare the matter time barred. In the application at hand, the law has done away with the requirement of leave to appeal to the court of appeal. This means that, it is only the court of appeal which has powers to determine whether or not the appellant is time barred not this court.

The amendment, being procedural law, its applicability has retrospective effect held the Court of Appeal in unreported Civil Application No. 117/06 of 2022, **Petro Robert Myavilwa v Zera Myavilwa and Erica Myavilwa**.



As such, this application has been overtaken by event and the only remedy is to strike it out as I hereby do. No cost is awarded as the move was caused by the operation of the law.

It is so ordered.

Dated at SONGEA ZONE this 15th of April 2024.

A handwritten signature in dark ink, appearing to read 'J. Karayemaha', is centered within a light blue rectangular box.

JAMES KARAYEMAHA
JUDGE OF THE HIGH COURT

