

IN THE HIGH COURT OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)
AT SUMBAWANGA

MISC. LAND APPLICATION NO. 9 OF 2023

(Arising from the Land Appeal No. 1 of 2021 at the High Court of Tanzania at Sumbawanga, Original Land Application No. 25 of 2017 from the District Land and Housing Tribunal for Rukwa at Sumbawanga)

FRANCIS MWASYEBA APPLICANT

VERSUS

THERESIA ZUMBA MZINDAKAYA (Next friend
of Michael Chrisant Mzindakaya) **1ST RESPONDENT**

JULIUS KALAYA 2ND RESPONDENT

RULING

14th May, 2024

MRISHA, J.

The applicant **Francis Mwasyeba**, is aggrieved by the decision of the High Court, Sumbawanga District Registry in respect of the Land Appeal

No. 1 of 2021 which was delivered on 29th May, 2023 by Hon. T. M. Mwenempazi, J. in favour of the respondent.

Being so aggrieved, the applicant filed with the court an application by way of chamber summons under section 47(2) of the Land Dispute Court Act Cap 216 R.E. 2019 and Rule 45(a) of the Court of Appeal Rules Cap 141 R.E. 2019 which is supported by an affidavit of Francis Mwasyeba. His application is intended to seek the leave of the court for him to appeal to the Court of Appeal.

In his affidavit, the said applicant has averred that the intended appeal has great chances of success in the Court of Appeal as there is a point of law stated in paragraph 5(a), (b), (c), (d) and (e) of his affidavit.

In reply, the respondent filed a counter affidavit and notice of preliminary objection with two grounds through which the latter has strongly disputed his counterpart's argument by contending that the applicant has not established any justifiable grounds which may warrant the court to grant an application for leave.

When the appeal was placed for hearing before this court, the applicant was absent and he was aware of the date of hearing scheduled by the

court, whereas the respondent had the services of Mr. Kurwa Ezlon Ngunga, learned advocate who submitted that the application for leave to appeal is no longer a legal requirement following the amendment of section 5 of the Appellate Jurisdiction Act [Cap 141 R.E. 2023] henceforth the AJA, which was amended by section 10 of the Legal Sector Law (Miscellaneous Amendment) Act No. 11 of 2023.

Consequently, he implored this court before hearing of preliminary objection, to allow the parties to the case to address it on amendments which has made current application to be overtaken by the operation of the law.

I will start by referring to the amendment of the Legal Sector Law (Miscellaneous Amendment) Act No. 11 of 2023 which came into effect on 1st December, 2023 and amended section 5 of the AJA by deleting section 5(1) of AJA and substituting for it the following provisions: -

"(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 revision jurisdiction.”

From the above provisions of the law, the amendment has done away with the leave requirement for one to appeal to the Court of Appeal against the decision of the High Court in the exercise of its original, appellate or revision jurisdiction.

In other words, obtaining leave has ceased to be a mandatory requirement before one can appeal to the Court of Appeal. See the case of **Petro Robert Myavilwa vs Zera Myavilwa & Another (Civil Application No. 117/06 of 2022) [2023] TZCA 17947** (13th December, 2023).

In present application, the applicant seeks for leave to appeal to the Court of Appeal so as to challenge the decision of the High Court when exercising its appellate jurisdiction in the Land Appeal No. 1 of 2021. However, since the said amendment, being procedural law which its applicability has retrospective effect, the application of that law applies to all actions after the date it came into force even though the action may have begun earlier.

As rightly submitted by Mr. Kurwa, as of now leave to appeal to the Court of Appeal is no longer a legal requirement at the wake of the said

amendment. Henceforth, I will not allow parties to argue on preliminary objection nor adjourn the matter rather for them to address the court, rather proceed to dispose of the present application based on the position of the law as far as the requirement of leave to appeal to the Court of Appeal is concerned. As such, this application has been over taken by events and the only remedy is to strike it out as I hereby do. No cost is awarded as the change was caused by the operation of the law.

It is so ordered.



A.A. MRISHA
JUDGE
14.05.2024

DATED at **SUMBAWANGA** this 14th day of May, 2024.



A.A. MRISHA
JUDGE
14.05.2024