

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**SUMBAWANGA DISTRICT REGISTRY**

**AT SUMBAWANGA**

**MISC. LAND APPLICATION NO. 26374 OF 2023**

(Arising from Land Appeal No. 19 of 2022, at the High Court of Tanzania at Sumbawanga, and Original Land Application No. 12 of 2022 at the District Land and Housing Tribunal for Rukwa at Sumbawanga)

**ILINDILO KACHACHE (The administrator of estates  
of the late KACHACHE ILINDILO) ..... APPLICANT**

**VERSUS**

**SEZA DONGEA ..... 1<sup>ST</sup> RESPONDENT**  
**MBOJE MASANGU ..... 2<sup>ND</sup> RESPONDENT**

22/02/2024 & 22/02/2024

**RULING**

**MWENEMPAZI, J.**

In this application the applicants felt aggrieved by the judgement of the High Court (Hon. Mruma, J.) delivered on the 2<sup>th</sup> November, 2023. Hence, they filed this applicant for leave to appeal to the Court of Appeal. The application is made under section 5(1) (c) of the Appellate Jurisdiction Act, 1979 [Cap 141 R.E 2019] Rule 46(1) and Rule 45(a) of Tanzania Court of Appeal Rules, 2009 of recent, a law has been enacted, legal sector law (miscellaneous Amendments) Act, No. 11 of 2023 which came into effect on 1<sup>st</sup> December,

2023. Section 10 of the said Act, amends section 5 of the Appellate jurisdiction Act, [Cap 141 R.E 2023], repeals section 5(1) by deleting it 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 pretuminary decree made by the High Court, in the exercise of its original, appellate or revisional jurisdiction".*

The changes featured in the quoted provision of law, have done away with the requirement of leave for one to appeal to the court of appeal against any decision of the high court, regardless of whether the impugned decision is an order, decree, and ex parte decree or a preliminary decree when exercising its original, appellate or revisional jurisdiction. In other words obtaining leave has ceased to be a requirement for one to appeal to the court of appeal effectively from 1<sup>st</sup> December, 2023.

Since the changes have a bearing on procedure law, the applicability of changes has a retrospective effect as well. In case of **Director of Public**

**Prosecution (DPP) Vs. Jackson Sifael Mtares** (Criminal Appeal No. 2 of 2018) [2018] TZCA 393 (7 September 2018) it was held that: -

*"Procedural amendments to a law, in absence of anything contrary, are retrospective in the sense that they apply to all actions after the date they came into force even though the actions may have begun earlier or the claim on which the action may be based occurred on the anterior date".*

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Based on the position Neema Charles, Advocate for the applicant has applied to withdraw the application. Under the circumstances, this application is overtaken by events and it was proper for the counsel for the applicants to apply to withdraw the same. For that matter the application is marked withdrawn. No order is issued as to costs.

It is ordered accordingly.

Dated and delivered this 22<sup>nd</sup> February, 2024.

  
**T.M. MWENEMPAZI**  
**JUDGE**

Ruling delivered this 22<sup>nd</sup> February, 2024 in the presence of Ms. Neema Charles, Advocate for the applicant and the 1<sup>st</sup> Respondent in person.



  
**T.M. MWENEMPAZI**  
**JUDGE**  
**22/02/2024**