

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

MISC. LAND APPLICATION NO. 14 OF 2023

(Arising from the decision of Hon. Mrisha A.A. Land Appeal No. 22 of 2022 High Court of Tanzania at Sumbawanga)

DEUSI FWAMBA	1ST APPLICANT
WILBROAD FWAMBA	2ND APPLICANT
ANTONI FWAMBA	3RD APPLICANT
ZENOBI FWAMBA	4TH APPLICANT
EVARIST FWAMBA	5TH APPLICANT

VERSUS

AUDIFASI SUNGA RESPONDENT

21/02/2024 & 21/02/2024

RULING

MWENEMPAZI, J.

In this application the applicants felt aggrieved by the judgement of the High Court (Hon. Mrisha, J.) delivered on the 29th September, 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 1st 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 1st 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".

Based on the position Tunu Mahundi, Advocate for the applicants 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 21st February, 2024.


T.M. MWENEMPAZI
JUDGE

Ruling delivered this 21st February, 2024 in the presence of Ms. Tunu Mahundi, Advocate for the applicants and the Respondents.




T.M. MWENEMPAZI
JUDGE
21/02/2024