

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM SUB REGISTRY)
AT DAR ES SALAAM**

MISC. CIVIL APPLICATION NO. 527 OF 2023

TATU BADI AMINI (*Administrator of the
Estate of the late Muktari Haji Mohamed*)**APPLICANT**

VS

HALIMA ABDUL WAHID.....**RESPONDENT**

RULING

S. M. MAGHIMBI, J:

The current application was lodged under the provisions of Section 5(l)(c) of the Appellate Jurisdiction Act, [Cap. 141 R.E 2019], Rule, 45(a) and Rule 47 of Tanzania Court of Appeal Rules, 2009 as amended. The applicant is moving this honorable Court to grant leave to appeal to the Court of Appeal of Tanzania against the decision and order of this court by (Hon. Bwegoge, J) in Misc. Civil Appeal No. 567 of 2022, a decision dated 18th August, 2023. This instant application was supported by an affidavit sworn by Tatu Badi Amini, the applicant herein.

I appreciate the submissions of the parties for and against the application herein. However, the instant application falls under the consequence of the changes brought by section 10 the Legal Sector Laws (Miscellaneous Amendments) Act 2023 whereby in the said changes, leave to appeal prior to lodging an appeal to the Court of Appeal from the decision of this court is no longer necessary. The amendments brought by the Legal Sector Laws (Miscellaneous Amendments) Act No. 11 of

2023, distinctly Section 10 of the Act has amended Section 5 of the Appellate Jurisdiction Act, Cap. 141, R.E 2019, effectively from 01/12/2023. For ease of reference the Section provides: -

"Sec 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 be 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"

From the above, the amendments have done away with the requirement of seeking for leave to appeal to Court of appeal against the decision of the High Court notwithstanding whether the impugned decision is an order, decree, an *ex-parte* decree or a preliminary decree when exercising its original, appellate or revisional jurisdiction. Therefore, it goes without saying that from 01/12/2023, obtaining leave has been terminated to be an obligatory pre-requisite unless there is expressed provision under a certain legislation.

The changes, being that of procedural law its applicability has retrospective effect. This position was aired out in the case of **Lala Wino vs Karatu District Council (Civil Application No. 132 of 2018) [2019] TZCA 46 (1 April 2019)**, whereby his Lordship Ndika, JA had this to say at page 4:

"I agree with Mr. Peter that the present application has been overtaken by events. The applicant's intended appeal falls

under the purview of the procedural amendment alluded to earlier and that it would lie to this Court as of right without the necessity of the leave of the High Court. In demonstrating this position, I wish to begin by citing with approval a holding made by the High Court (Hamlyn, J.) in Benbros Motors Tanganyika Ltd. v. Ramanlal Haribhai Patel [1967] HCD n. 435 that: -

"When a new enactment deals with rights of action, unless it is so expressed in the Act; an existing right of action is not taken away, but when it deals with procedure only, unless the contrary is expressed, the enactment applies to all 4 actions, whether commenced before or after the passing of the Act. "

Having the above position in mind, it is my firm view that this application becomes affected by the said changes meaning that it has been overtaken by event. Consequently the application is hereby struck out. Given the nature upon the decision is based, I make no order as to costs.

Dated at Dar es Salaam this 27th Day of May, 2024.



A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a dotted line.

S. M. MAGIMBI
JUDGE