

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

**[ARUSHA SUB- REGISTRY]**

**AT ARUSHA**

**MISC. LAND APPLICATION NO. 92 OF 2023**

**COLLETHA BENEDICT ITEMBA \_\_\_\_\_ APPLICANT**

***Versus***

**JULIUS MAKARA LAIZER \_\_\_\_\_ 1ST RESPONDENT**

(Administrator of the estate of the late **ALLAN JOYCE HASHAM**  
trading as Europe Medical Centre, Trinity Medical Clinic  
and Trinity Medical Diagnostic Clinic)

**PAULO RAMADHANI ALIS**

**ABDALLAH RAMADHANI \_\_\_\_\_ 2ND RESPONDENT**

**DAVEEJ VELJI PATEL \_\_\_\_\_ 3RD RESPONDENT**

**DAVID VITALIS MSANGI \_\_\_\_\_ 4TH RESPONDENT**

**IMMANUEL SWAI \_\_\_\_\_ 5TH RESPONDENT**

**JEREMIAH SWAI \_\_\_\_\_ 6TH RESPONDENT**

**JUMA PILI \_\_\_\_\_ 7TH RESPONDENT**

**GABRIELY LEMUKOK \_\_\_\_\_ 8TH RESPONDENT**

**MUSA LAIZER \_\_\_\_\_ 9TH RESPONDENT**

**NEEMA KIBWANA MOLLEL \_\_\_\_\_ 10TH RESPONDENT**

**ROMATA J. ROMATA \_\_\_\_\_ 11TH RESPONDENT**

**RIZIKI TEMBA \_\_\_\_\_ 12TH RESPONDENT**

**VINA MANJI RAVJI \_\_\_\_\_ 13TH RESPONDENT**

*(Arising from the Miscellaneous Land Application No. 160 of 2022 at the High Court of Tanzania at Arusha, Original Land Case No. 10 of 2020 from the Arusha District Registry at Arusha)*

**RULING**

22/05/2024

**BADE, J.**

The applicant **Colletha Benedict Temba**, is aggrieved by the decision of the High Court, Arusha Sub Registry in respect of the Misc Land Application No. 160 of 2022 which was delivered on 27<sup>th</sup> July, 2023 by Hon. J. C. Tiganga, J. in favour of the respondents.

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 5 (c) of the Appellate Jurisdiction Act Cap 141 R.E. 2019 which is supported by an affidavit of Colletha Benedict Temba. Her application is intended to seek the leave of the court for her to appeal to the Court of Appeal.

When the application was placed for hearing before this court, I noticed that the matter was previously scheduled twice but there is no appearance from the parties, despite being summoned a hearing in court.

In the wake of the fact that an 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, I took the liberty to dispose off the matter forthwith as the current application is now overtaken by the operation of the law.

The Legal Sector Law (Miscellaneous Amendment) Act No. 11 of 2023 which came into effect on 1<sup>st</sup> December 2023, as well as part 12 amended section 47 (2) of the Land Disputes Courts Act Cap 216 by deleting subsection 2 of the said section. Section 5 of the AJA is now amended through deleting section 5(1) of the said law 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 (13<sup>th</sup> December, 2023).**

The present application seeks for leave to appeal to the Court of Appeal so as to challenge the decision of the High Court when exercising its original jurisdiction in the Land Application No. 160 of 2022. However, since the said amendment, being procedural law whose 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.

Now since leave to appeal to the Court of Appeal is no longer a legal requirement, I will not clog the registry by adjourning the matter for non appearance, rather I am proceeding 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 overtaken by events and the only remedy is to strike it out as I hereby do.

No order as to costs.

It is so ordered.

**DATED at ARUSHA this 22<sup>nd</sup> day of May 2024**

*A. Z. Bade*

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**A. Z. Bade**  
**Judge**  
**22/05/2024**

Ruling delivered in the presence of the Parties' representatives in chambers  
on the **22nd** day of **May 2024**



*A. Z. Bade*

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**A. Z. BADE**  
**JUDGE**  
**22/05/2024**