

IN THE HIGH COURT OF TANZANIA
DODOMA SUB-REGISTRY
AT DODOMA
LAND REVIEW NO. 1 OF 2023

(Arising from the ruling of the High Court of Tanzania at Dodoma in Misc. Land Application No. 63 of 2020, Kagomba J.; and the ruling of the High Court in Land Case Revision No. 5 of 2011, Masaju J.; originating from Land Application No. 110 of 2010 in the District Land and Housing Tribunal for Dodoma at Dodoma)

SADALLAH IBRAHIM SADALLAH *(as Administrator of the Estate of Hamisi Shaban Malongo)*.....**APPLICANT**

VERSUS

MPWAPWA DISTRICT COUNCIL.....**RESPONDENT**

RULING

18th March, & 19th March, 2024

MUSOKWA, J.

The matter before this court is an application for review against the decision of this Court in Misc. Land Application No. 63 of 2020, dated 21st July, 2022 (Kagomba J.). The applicant herein, filed an application for leave to appeal to the Court of Appeal of Tanzania (CAT) under section 47(2) of the Land Disputes Courts Act, Cap. 216 R.E. 2019 (Cap. 216) and Rule 45 (a) of the Tanzania Court of Appeal Rules, 2019. The respondent raised a preliminary objection on the following points of law: -

1. That the application was time barred.
2. That the applicant has no *locus standi*.

The preliminary objections were heard, and the 1st point of objection relating to time limit was sustained, and this court dismissed the said application for being time barred as per the provision of section 3(1) of the Law of Limitation Act, Cap. 89, R.E 2019 (LLA).

Following the dismissal of the application aforementioned, the applicant was aggrieved and lodged the application at hand under section 78 (1) (a), Order XLII Rule 1(a), (3) of the Civil Procedure, Code Cap. 33, R.E 2019 (CPC) containing the following prayers:

- 1. That, the application in Misc. Land Application No. 63 of 2020 was not time barred as was filed on 3/9/2020 and the payment was effected on 4/9/2020 at 13:54:30.*
- 2. That, the payment Control Number 991400290739 is a valid number as was paid through the account of Advocate for the Applicant, one Samwel Mcharo.*
- 3. That, the Applicant could only obtain the said control number for the payment of the application after the same was admitted through the e-filing system on 03/09/2020.*

Subsequently, the respondent raised a preliminary objection that the application for review was time-barred, contrary to the provision of section 3 (1) and Part III, item 3 of the Schedule to the LLA. The said preliminary objection was heard and overruled thereof. As the result, the application for review was scheduled for hearing on merits on 18th March, 2024.

During the hearing, the applicant was represented by Mr. Samwel Mcharo, learned counsel while Ms. Agnes Makuba, learned state attorney appeared for the respondent. Before the commencement of the hearing, the court invited the parties to address it on the propriety or otherwise of the application before this court, given the amendments of section 47 of Cap. 216 through the Legal Sector Laws (Miscellaneous Amendments) Act, No. 11 of 2023 with regard to the requirement of leave before processing an appeal to the CAT.

Addressing the court on the point raised by the court *suo motu*, Mr. Samweli Mcharo, learned counsel for the applicant, submitted that, the matter before this court is an application for review which arises from the ruling of Misc. Land Application No. 63 of 2020. The said application intended to seek leave for the purpose of processing an appeal to the CAT. However, upon an objection that was raised being sustained, the application was consequently dismissed. Thereafter, the applicant filed

before this court the current application for review of the decision of this court in Misc. Land Application No. 63 of 2020.

Mr. Mcharo referred the court to section 47 of the Legal Sector Laws (Miscellaneous Amendments) Act No. 11 of 2023 which amended section 47 of Cap. 216. In addition, Mr. Mcharo averred that, subsequent to these amendments, there is no longer a requirement to apply for leave to appeal to the CAT. The learned counsel submitted further that, in consideration of the fact that the application before this court concerns the review of the decision relating to an application for leave to appeal to the CAT; it is obvious that the application before this court has been overtaken by events. Therefore, Mr. Mcharo prayed for leave to withdraw the application without costs, in order for the applicant to proceed with the appeal process to the CAT, given that the notice of appeal was already filed before this court. The case of **Petro Robert Myavilwa vs Zera Myavilwa and Erica Myavilwa, Civil Application No. 117/06 of 2022** (unreported) was preferred in support of his position.

Supporting the submissions of the applicant, Ms. Agnes Makuba, state attorney, stated that since the prayers in the instant application for review intends to enforce an application for leave which was done away by the law, she does not object to the prayers of the applicant's counsel.

Having heard and considered the submissions of the parties, I will now address the issue at hand. The amendments of the law referred to, to wit, section 47 of the Legal Sector Laws (Miscellaneous Amendments) Act No. 11 of 2023, amended section 47 (2) of Cap. 216, by waiving the mandatory requirement to apply for leave to appeal to the CAT. Before the said amendment, section 47 (2) of Cap.216, read as follows: -

*"A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may, **with leave of the High Court or Court of Appeal, appeal to the Court of Appeal.**" [emphasis added]*

However, section 47 of the Legal Sector Laws (Miscellaneous Amendments) Act No. 11 of 2023, which became effective on 1st December 2023, amended section 47(2) of Cap. 216 as follows: -

- 47. The Principal Act is amended in section 47-*
- (a) In subsection (1), by inserting the words "appellate or revisional" immediately after the word "original",*
 - (b) **By deleting subsection (2) and***
 - (c) **By renumbering subsections (3) and (4) as subsections (2) and (3) respectively.***

According to the provisions of the law cited above, the requirement of leave to appeal to the CAT was waived as of 1st December, 2023. In the case of **Petro Robert Myavilwa (supra)** the CAT on page 6 held as follows: -

*"The changes **have done away with leave requirement for one to appeal to the Court of Appeal** against the decision of the High Court regardless of whether the impugned decision is an order, decree, an 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 requisite before one can appeal to court effective the 1st December, 2023."* [emphasis added]

As stated earlier, the applicant lodged this application for the review intending to challenge the decision of this court dated 21st of July 2022, which dismissed an application for leave to appeal to the CAT. The said amendments, being procedural law, have a retrospective effect and therefore relevant in the circumstances of this application.

In consequence whereof, and for the reasons stated herein above, this application has been overtaken by events. I therefore proceed to struck

out the instant application for being incompetent. No costs awarded because the matter is based on the operation of the law.

It is so ordered.

Right of appeal explained.

DATED at DODOMA this 19th Day of March, 2024.



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I.D. MUSOKWA
JUDGE

Ruling delivered in the presence of the applicant and his Advocate Mr. Samwel Mcharo; and in the presence of Ms. Kumbukeni Kondo, learned State Attorney.



A handwritten signature in blue ink, appearing to read "I.D. Musokwa".

I.D. MUSOKWA
JUDGE