

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM.

MISC. LAND CASE APPLICATION NO. 349 OF 2017

PETER NDATELE TEGEMEA.....APPLICANT

VERSUS

DR. PHILIP ALAN LEMA.....RESPONDENT

R U L I N G

Date of last order: 27/2/2018

Date of Ruling: 11/5/2018

MGONYA, J.

Before me is an Application for leave to Appeal to Court of Appeal of Tanzania. The Respondent's Counter Affidavit is accompanied by the advanced point of preliminary Objection that:-

"The Court has not been properly moved."

The current application is brought under **Section 5 (1) (c) of Appellate Jurisdiction Act, Rule 45 of Court of Appeal of Tanzania Rules and Section 47 (1) of Land Disputes Courts Act Cap. 216.**

It is the Respondent's submission that since there is a cocktail of enabling provisions, then this court has not been properly moved.

I have gone through the Respondent's submission and the sentiment propounded by the Court of Appeal of Tanzania in the case of ***MABAO YING VS. MBEYA CITY COUNCIL, Civil Appeal No. 97 of 2013*** which the learned Counsel cited. Upon referring to the same, it has come to my knowledge that the said case insisted the citation of the provision of **Section 47 (1) of the Land Disputes Court Act Cap. 216** as enabling provision to this kind of Application. Since the said case insisted on the citation of **Section 47 (1) (Supra)**, I find that the Applicant has complied with the said law since in his Chamber Summons as he has also cited **Section 47 (1) (Supra)** which is enabling.

Citing **Section 5 (1) (c) of Appellate Jurisdiction Act**, and **Rule 45 (a) of Court of Appeal Rules 2009**, was superfluous, but the same does not affect the competence of present Application since **Section 47 (1) of the Land Disputes Court Act Cap. 216** has been cited.

From the above, the preliminary objection raised has no merit since enabling provision has been cited, that is **Section 47 (1) of Cap. 216**, then the court has been properly moved.

Under that premises, **the Preliminary objection is hereby overruled with costs.**

The matter is to proceed on merit.

It is so ordered.



L. E. MGONYA

JUDGE

11/5/2018

COURT: Ruling delivered in the presence of Advocate Thomas Massawe for Respondent and Ms. Emmy B/C in my chamber today 11th May, 2018.



L. E. MGONYA

JUDGE

11/5/2018