

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

(Arising from decision of the High Court of Tanzania, Land Division in Miscellaneous Land Appeal No. 13 of 2017 as per Makuru, J)

MISC LAND APPLICATION NO. 186 OF 2018

BETWEEN

SELINA DEVID KUBOJA.....1ST APPLICANT

HILDA SAID MAKOTA.....2ND APPLICANT

VERSUS

HELENA GENI LUCAS.....RESPONDENT

RULING:

I. MAIGE, J

1. This application is made under section 5(1) (a) of the **Appellate Jurisdiction Act, Cap. 141 R.E. 2002** and section 47(1) of the **Land Courts Disputes Act, Cap. 216, R.E., 2002 ("LCDA")**, among others. The order sought herein is for leave to appeal to the Court of Appeal of Tanzania against the decision of this Court in

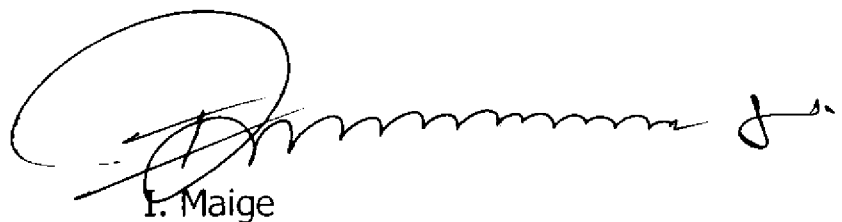
Miscellaneous Land Appeal No. 13 of 2017. It was a decision on second appeal delivered by madame Judge Makuru on 22/02/2018.

2. At the hearing of this matter, each of the parties appeared in person and was not represented. The application was argued by way of written submissions which were presented in due compliance with my direction. I have given the rival submissions due consideration and I will proceed to consider the merit or otherwise of the same henceforward.
3. The requirement of leave to appeal to the Court of Appeal imposed in the provision of section 47(1) of the **LCDA** relates to an appeal against a decision of the District Land and Housing Tribunal ("DLHT") in exercise of its original jurisdiction. It is thus required where an appeal to the High Court is a first appeal.
4. The decision under consideration being in respect of an appeal against a decision of the **DLHT** on appeal, the respondent submitted correctly, is governed by the provision of section 47(2) of the **LCDA**. An appeal arising from such a decision requires certificate on points of law and not leave.
5. At page 3 of their written submissions, it would appear, the applicants are aware of this cardinal principle of law. They seem

however to indirectly urge this Court to convert this application into an application for certification on points of law. I do not think that it is a proper motion. This Court is in law expected to grant or not what is officially sought in the chambers summons supported by an affidavit. In the same token, the submissions in support of an application must be founded on what is sought in the chamber summons and deposed in the affidavit. That is an elementary position of law and I need not necessarily cite an authority therefor.

6. On that account therefore, I entirely agree with the respondent that the prayer raised in the written submissions in so far as it is extraneous to the application, is unworthy of being considered. It is incompetently before the Court so to say. It is accordingly struck out with costs.

It is so ordered.

A handwritten signature in black ink, appearing to read 'J. Maige', with a large, stylized initial 'J' and a long, flowing horizontal stroke.

JUDGE

20/03/2020

Date: 20/03/2020

Coram: Hon. S.H. Simfukwe - DR

For the 1st Applicant: Absent with notice

For the 2nd Applicant: Present in person

For the Respondent: Absent

RMA: Bukuku

COURT:

Ruling delivered in chamber this 20th day of March, 2020 in the presence of the second Applicant in person and in the absence of the first Applicant and the Respondent.


S.H. Simfukwe

DEPUTY REGISTRAR

20/03/2020