

**IN THE HIGH COURT OF UNITED REPUBLIC OF REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPLICATION NO. 545 OF 2018

(From Land Application No. 428 of 2017 Origin Land Case No. 39 of 2007)

**DAVID PANDAKILIMA, EMILIA MWINGIRA,
JANUARY KATEKULA & 61 OTHERS..... APPLICANTS**

VERSUS

**PRINCIPAL SECRETARY MINISTRY OF LAND
AND HUMAN SETTLEMENT.....1ST RESPONDENT
HON. ATTORNEY GENERAL.....2ND RESPONDENT**

Last Order:8/06/2021

Date Ruling:20/08/2021

R U L I N G

MANGO, J.

By way of Chamber Summons made under Section 5(1)(c) of the Appellate Jurisdiction Act, Cap 141 R.E 2002 the Applicants pray for the following orders:

- 1. That this Honourable Court be pleased to grant leave to the Applicants to Appeal to the Court of Appeal of Tanzania against the whole of the decision of the High Court of Tanzania, Land Division in Misc. Land Application No. 428 of 2017 dated 20th July 2018;**
- 2. Costs of the Application;**
- 3. Any other reliefs as this Court shall deem fit and just to grant.**

The Application is supported by an affidavit sworn by the Applicants. Despite being served with both the Application and Court Summons, the Respondents did not file a counter affidavit despite. They also did not enter appearance on a number of dates that the matter was called on for hearing. On 22nd July 2021 the matter was called for hearing, Mr. Heavenlight Mlinga, learned counsel for the Applicants prayed to have the Application granted as it is not contested.

Court record indicates that on 20th July 2018 this Court dismissed Misc. Land Application No. 428 of 2017. In Misc. Land application No. 428 of 2017, the Applicants prayed for leave to appeal against the decision of this Court in Land Case No. 39 of 2017. Aggrieved by the decision of this court, the Applicants seeks leave of this court to appeal against the dismissal of their application for leave to the Court of Appeal. It is well established that the remedy for a person who is aggrieved by the decision of the High Court in application for leave to Appeal to the Court of Appeal on Land matters is to appeal against the decision. In the case of **Yusufu Juma Risasi versus Anderson Julius** Civil Application No. 176/11/2017, Court of Appeal of Tanzania at Tabora, the Court of Appeal held that, the remedy for refusal of leave under section 47(1) of the Land Disputes Courts Act is to Appeal to the Court.

Section 47(1) of the Land Disputes Courts Act, [Cap. 216 R.E. 2002] provided for exclusive jurisdiction of the High Court to entertain and determine Applications for leave to Appeal to the Court of Appeal in Land matters. The section reads:

"Any person who is aggrieved by the decision of the High Court in the exercise of its original, revisional or appellate jurisdiction may with leave of the High Court appeal to the Court of Appeal in accordance with the Appellate Jurisdiction Act."

Literal interpretation of the section 47(1) of the Land Disputes Courts Act, [Cap 216 R.E. 2002] indicates that, when entertaining and determining applications for leave to appeal to the Court of Appeal of Tanzania, the High Court exercises its exclusive original jurisdiction.

Section 47(1) of the Land Disputes Courts Act, [Cap. 216 R.E 2019] removed leave requirements for Appeals to the Court of Appeal of Tanzania against the decision of the High Court when exercising its origin jurisdiction. The section reads;

" A person who is aggrieved by the decision of the High Court in the exercise of its original jurisdiction may appeal to the Court of Appeal in accordance with the provisions of the Appellate Jurisdiction Act."

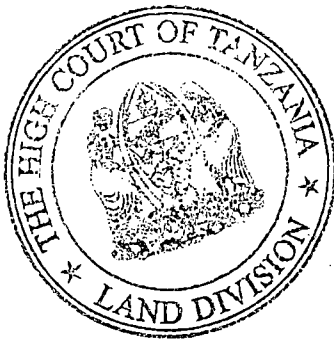
I am of the view that, in determining applications for leave to appeal to the Court of Appeal in land matters, the High Court exercises its exclusive original jurisdiction. In that regard, a person who is aggrieved by the decision of the High Court refusing to grant leave to appeal to the Court of Appeal of Tanzania can Appeal against such decision to the Court of Appeal of Tanzania without seeking leave of this court.

However, this Application was filed when leave of the High Court was a mandatory requirement for all appeals in Land Matters from the High Court to the Court of Appeal. I cannot consider whether there are any arguable issues that deserve to be determined by the Court of Appeal as this Court has already made its findings on that aspect when determining Misc. Land Application No. 428 of 2017. For that reason, I hereby grant the Application.

The Applicants are granted leave to appeal against the decision of this Court in Land Application No. 428 of 2017. Given circumstances of this Application, I award no costs.



Z. D. MANGO
JUDGE
20/08/2020



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