THE UNITED REPUBLIC OF TANZANIA

(JUDICIARY)

THE HIGH COURT - LAND DIVISION

(MUSOMA SUB REGISTRY)

AT MUSOMA

Misc. LAND APPLICATION No. 59 OF 2022

(Arising from the High Court (Musoma Sub Registry) in Land Appeal No. 118 of 2021 & Originating from the District Land and Housing Tribunal for Mara at Tarime in Land Application No. 75 of 2018)

CHACHA MATTO (SINSIGA) ..... **APPLICANT**

Versus

1. WAMBURA MGUSUHI MWITA
2. MHIRI MGAYA MANG'ERA
3. MWITA RYOBA IRONDO
4. JULIUS CHACHA BEGA
5. LAMECK ATHANAS CHACHA

..... **RESPONDENTS**

RULING

30.03.2023 & 30.03.2023
Mtulya, J.:

The appellant, **Mr. Chacha Matto (Sinsiga)** had preferred the present application seeking for leave to appeal to the Court of Appeal (the Court) and cited the provision of Rule 45 (a) of the **Court of Appeal Rules, GN. No. 344 of 2019** (the Rules) to move this court to resolve the application in his favour. When the application was scheduled for hearing today morning, **Mr. Innocent Benard**, learned counsel for the respondents, protested

the application for want of section 47 (2) of the **Land Disputes Courts Act [Cap. 216 R.E. 2019]** (the Act) and decision of this court in **John Marco v. Seif Joshua Malimbe**, Misc. Land Application No. 66 of 2019 as the case originated at the **District Land and Housing Tribunal for Mara at Tarime** (the tribunal) in **Land Application No. 75 of 2018.**

Finally, Mr. Benard prayed for struck out order in the application for want of the cited authorities with costs. Replying the submission, **Ms. Helena Mabula** and **Mr. Baraka Makowe**, learned counsels for the applicant had conceded the submission on the point of law resisting the jurisdiction of this court, but protested the prayer for costs and added another prayer for leave to refile fresh and proper application in accordance to section 47 (2) of the Act.

I have perused the record of present application, section 47 (2) of the Act and pages 7 & 8 of the typed judgment in the cited precedent of **John Marco v. Seif Joshua Malimbe** (supra) regarding the above subject and found that: first, the instant application originated from the tribunal exercising its original jurisdiction; second, leave to access the Court for decisions originated from the tribunal when exercised its original mandate

in resolving land disputes is regulated by specific land law in section 47 (2) of the Act; and finally, the decision in **John Marco v. Seif Joshua Malimbe** (supra) interprets the indicated Rule 45 (a) of the Rules and at pages 8 had resolved that:

> *...what is clear is that Rule 45 (a) of the Court of Appeal, 2009 chosen by the legal practitioner is utterly irrelevant and constitutes wrong citation...there can hardly be any dispute that the instant application has nothing to do with leave to appeal...the profound error in the choice of the enabling provision is fundamental and going to the very root of the matter...the court has not been properly moved and incompetent application is liable to striking out...I strike out the application with costs.*

This position of the law in precedent is now certain and settled. It has received a bunch of precedents of this court and a support of the Court. In this court, similar display is found in the decisions of: **Peter Ndatale Tegemea v. Dr. Philip Alan Lema**, Misc. Land Application No. 349 of 2017; **Iddi Uddi Miiruko v. Simon N. Sokolo**, Misc. Land application No. 188 of 2020; and **Hamad Mussa & 96 Others v. TanRoads & Two Others**, Misc.

Land Application No. 541 of 2017. The support of the Court is found at page 4 in the precedent of **Mabao Ying v. Mbeya City Council**, Civil Appeal No. 97 of 2013, where the Court had blessed the position of this court and observed that:

> *...our observation is that the proper enabling provision for land matters is section 47 of the Land Disputes Courts Act. The High Court was therefore wrongly moved in its order which granted the appellant leave to appeal to the Court of Appeal.*

Having noted the position of this court and support of our superior court in judicial hierarchy, I need not be detained on the subject. Regarding the prayers of costs, it is established practice in this court that costs follow the event. Since I found this application is incompetent, costs must follow the event. I am therefore moved to strike the application out with costs. With the applicant's prayer of leave to file fresh and proper application, I have considered interest of justice, speed trials, costs to the litigants and persuaded by the recent decision of the Court in **Geita Gold Mining Limited v. Anthony Karangwa**, Civil Appeal No. 42 of 2020, which resolved issues of time limitation and application for enlargement of time, I grant the applicant

fourteen (14) days leave from today to refile fresh and proper application in accordance to the laws regulating leave to access the Court without any further delay.

It is so ordered.

F. H. Mtulya

Judge

30.03.2023

This Ruling was delivered in Chambers under the seal of this court in the presence of first respondent, **Mr. Wambura Mgusuhi Mwita**, and his learned counsel, **Mr. Innocent Bernard** and in the presence of the applicant's learned counsels, **Mr. Baraka Makowe** and **Ms. Helena Mabula**.

F. H. Mtulya

Judge

30.03.2023