

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

**MISC. LAND APPLICATION NO. 705 OF 2022**  
(Arising from Misc. Land Application No. 21 of 2022)

**NATIONAL MICROFINANCE BANK LIMITED .....APPLICANT**

**VERSUS**

**MWAJUMA HUSSEIN SAID.....1<sup>ST</sup> RESPONDENT**  
**NUTMEG AUCTIONEERS & PROPERTY MANAGERS CO.**  
**LTD.....2<sup>ND</sup> RESPONDENT**  
**FADHILI MUSAKUZI MUNGAA.....3<sup>RD</sup> RESPONDENT**  
**MBEGU ALLY GEREZA.....4<sup>TH</sup> RESPONDENT**  
**SMART STRALEY MEENA.....5<sup>TH</sup> RESPONDENT**

**R U L I N G**

*Date of last Order:15/03/2023*

*Date of Ruling: 30/03/2023*

**K. D. MHINA, J.**

By a chamber summons taken under section 47 (2) of the Land Disputes Courts Act, Cap 216 R: E 2019 ("the LDCA") and Rule 45 (a) of the Tanzania Court of Appeal Rules, 2019, the applicant, the **National Microfinance Bank Ltd** instituted this application against the respondents, Mwajuma Hussein Said, Nutmeg Auctioneers and Property Managers Co. Ltd, Fadhili Musakuzi Mungaa, Mbegu Ally Gereza, and Smart Starley Meena.

The applicant, *inter-alia*, is seeking the following orders: -

- i. That applicants be granted leave to appeal to the Court of Appeal against the ruling and drawn order of this Court (Honourable A.A Omari) dated 6 October 2022;*
- ii. Costs of this application in the course.*
- iii. Any other order or incidental relief as it deems fit and just.*

The grounds for the application were expounded in the affidavit, which Sharifa Karanda, the principal officer of the applicant, affirmed in support of the application.

Responding to the application, the 1st, 3rd, and 4th respondents countered it through the affidavit in reply. Others respondents did not file their counter-affidavits.

However, before hearing the application, *suo mottu*, I prompted the parties to satisfy this Court on the propriety of the application. I wanted to satisfy myself on whether the application is properly before this Court because it is the application for leave against the decision of this Court refusing to grant an extension of time.

Therefore, I called upon the parties and invited them to address the court.

Ms. Kulwa Shilemba, the learned advocate for the applicant, who “kicked the ball” to initiate the hearing, submitted that Section 47 (1) of the

LDCA provides that a person who is agreed with the decision of the High Court, when exercising its original jurisdiction may appeal to the court of appeal in accordance with the Appellate Jurisdiction Act. On the other hand, Section 47 (2) requires leave when High Court exercises its revisional or appellate jurisdiction to appeal to the Court of Appeal.

In this application, the decision of the High Court refusing an extension of time originated from the decision of the Tribunal in Application No. 213 of 2018. Therefore, it was the High Court's decision when it exercised its appellate jurisdiction.

Further, she submitted that the controlling provision of appeal from the High Court to the Court of Appeal is section 5 of the Appellate Jurisdiction Act.

She further cited Section 5 (1) of the AJA, which reads;

*"In civil proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal—*

*(a) against every decree, including an ex parte or preliminary decree made by the High Court in a suit under the Civil Procedure Code, in the exercise of its original jurisdiction".*

And submitted that the matter which was before this court was an application (extension of time) and not a suit; therefore, does not fall under S. 5 (1) (a) of AJA. Further, it does not fall under section 5(1) (b).

Therefore, he submitted that because the application does not fall under S. 5 (a) (b) of the AJA, then section 5 (1) (c) is applicable, and it can take effect together with S. 47 (2) of the LDCA.

She concluded by submitting that because S. 5 (1) (a) (b) of the AJA talks about the decision originating from suit and orders, and before this court, it was the application for extension of time; therefore, it is distinguished from the suit.

Further, S. 47 (2) LDCA talks about revisional and appellate jurisdiction; therefore, the court did not sit on its original jurisdiction in the application for an extension of time.

In response, Mr. Paul Mtui, the learned advocate for the 1<sup>st</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> respondent, submitted that this application originated from Misc—Land Application No. 21 of 2022, which was for the extension of the to file an appeal. Therefore, the High Court was exercising its original jurisdiction on

that application, and such an application does not require leave to appeal to the court of appeal.

He further submitted that there is no distinction between an application and a suit because an application is the same as a suit.

Submitting further, he said section 5 (1) AJA categorically provides that leave is required if there is no other written law. But in this matter and S.47 (1) of the LDCA provides for an automatic appeal, the applicant may go directly to the Court of Appeal without seeking leave as the application for extension of time was originally decided by the court. It was not an appeal.

He concluded by submitting that the applicant may appeal straight to the Court of Appeal.

On his side, Mr. Andrew Miraa, the learned counsel for the 5<sup>th</sup> respondent, briefly submitted that the application is proper because when the court sits to determine an extension of time, it sits as an appellate court.

This was because this court was moved to extend the time to appeal against the decision of the Tribunal. Therefore, the High Court sat as the appellate court; therefore, leave is required per S. 47 (2) of the LDCA.

In a brief rejoinder, Ms. Shilemba submitted that the application for an extension of time is not a suit that resulted in the Judgment and Decree. The Application produces a ruling and drawn order; therefore, as per section 5 (1) (c) of the AJA, leave is the requirement.

She further submitted that, therefore, to peg an application for an extension of time under S. 47 (1) of LDCA is not proper because the High Court could not get the jurisdiction to determine an extension of time without the decision of the tribunal. Therefore, the High Court was exercising its appellate or revisional jurisdiction in the extension of time.

She concluded by submitting that S. 47 (1) of LDCA is applicable if an extension was in respect of the extension originating from the decision of the High court.

Having heard both parties for and against the propriety of the application and before traversing to the merits or demerits of the application, it is essential, quite briefly, to determine the issue raised by Ms. Shilemba Advocate that an *"application is not a suit."*

In this, neither the Appellate Jurisdiction Act cited by Ms. Shilemba nor the Civil Procedure Code defines a suit. However, in **the Attorney**

**General v. Reverend Christopher Mtikila**, Civil Appeal No. 20 of 2007 (Tanzlii), the Court of Appeal, on pages 9 and 10, defined 'suits' to mean:

*"Proceedings of a civil nature in a court of law involving two or more parties on a dispute or claim which needs to be adjudicated upon, to determine or declare the rights of the disputing parties."*

Further, this Court (Mlyambina. J) in **Burafex Ltd (Formerly known as AMETAA Ltd) vs. Registrar of Titles**, Civil Appeal No. 235 of 2019, (HC-DSM Unreported) defined the term suit as;

*"is a proceeding of civil nature in various forms such as petition, application, appeal, review, revision or as referred in the Civil Procedure Code (supra) filed in a Court of Law between two or more parties for the determination of rights and duties of such persons"*

Flowing from the above-cited cases, then the issue should not detain me long as I subscribe to the view that applications fall within the ambit of the word suit. Therefore, the application for an extension of time, subject to this application for leave (Misc. Civil Application 21 of 2022), which affected the finality of determining the parties' rights, was a suit.

Coming to the merits or demerits of the application, the entry point is the decision of the Court of Appeal in **Hassan Kibasa vs. Angelesia**

**Chang'a**, Civil Application No. 405/13 of 2018 (Tanzlii), which for clarity, I quote the facts of that matter and its decision.

*"The applicant was the losing party in the District Land and Housing Tribunal of Iringa in Land Appeal No. 76 of 2010 in which he contested the decision of the Ward Tribunal of Ruaha dated 8th September 2010 rendered in favour of Angelesia Chang'a, respondent. Although he was desirous of appealing to the High Court against the aforesaid decision of the District Tribunal, he did not file his intended appeal within the prescribed limitation period. Consequently, he filed Miscellaneous Land Application No. 27 of 2012 in the High Court at Iringa pursuant to section 38 (1) of the Land Disputes Courts Act, Cap. 216 R.E. 2002 (now R.E. 2019) ("the LDCA") pursuing an extension of time within which to appeal. In its ruling handed down on 9th October, 2015, the High Court dismissed the matter on the ground that there was no good and sufficient cause for condonation of the delay involved. Resenting the above outcome, the applicant approached the High Court vide Miscellaneous Land Application No. 15 of 2016 predicated on section 47 (1) of the LDCA seeking leave to appeal to this Court against the aforesaid refusal of extension. We shall henceforth refer to this matter as "the leave application." It occurred that the application was greeted with a preliminary objection based on two points to the effect that it was "defective for want of proper attestation" and that "the affidavit in support of the application was defective." In its ruling dated 2nd September, 2016, the High Court, at first, dismissed the preliminary*



*objection on the ground that it was misconceived. However, before she took leave of the matter in the course of her ruling, it dawned on her that the application was predicated on wrong enabling provisions of the law. On the authority of five decisions of this Court which she cited on the effect of the ailment she had raised suo motu, she struck out the matter on the reason that wrong citation of enabling provisions rendered the application incompetent. Still unwaveringly, the applicant went back to the High Court vide Miscellaneous Land Application No. 40 of 2016 moving it to review its decision of 2nd September, 2016 in Miscellaneous Land Application No. 15 of 2016 pursuant to section 78 (a) and Order XLII, rule 1 (1) (a) of the Civil Procedure Code, Cap. 33 R.E. 2002 (now R.E. 2019) ("the CPC"). This pursuit bore no fruit as the High Court dismissed it with costs on 31st March 2017 for want of merit. Since in terms of Order XLII, rule 7 (1) of the CPC, the High Court's rejection of the review is not appealable, revision to this Court is the applicant's only available remedy, hence this application.*

In its decision, the Court of Appeal held that;

*"Given the settled position of the law as discussed above, we find without any hesitation that the course taken by the learned High Court Judge to li determine the application for leave on a point she raised suo motu in the course of composing her judgment without affording the applicant an opportunity to be heard constituted an incurable defect that went to the root of the matter rendering her decision and order null and void. The*

*same fate must befall the subsequent proceedings, ruling and order in the review application as they stemmed from a nullity.*

***We would ordinarily have remitted the application for leave to the High Court for a fresh hearing in accordance with the law and procedure, but we are in agreement with Mr. Mongo that doing so is clearly uncalled for and impractical. As rightly argued by him, leave to appeal is no longer a prerequisite for land matters arising from the High Court's exercise of its original jurisdiction following the amendment of section 47 (1) of the LDCA by section 9 of the Written Laws (Miscellaneous Amendments) (No. 3) Act, No. 8 of 2018".*** [Emphasis provided]

As I said earlier, the aim of quoting this cited case at length is for clarity because the facts of the cited case are similar to this case. In both matters, the applicants found themselves outside the prescribed time to file appeals from the District Land and Housing Tribunal to the Court of Appeal. Their applications for an extension of time, which by law are heard by the High Court, were refused. Therefore, from the cited case, applications such as this leave to appeal to the Court of Appeal are no longer required after the amendment of section 47 (1) of the LDCA.

From the above discussion, I think a brief background of section 47 (1) of the LDCA may be instructive to appreciate the current position of law.

Before 2018 when the Written Laws (Miscellaneous Amendments) Act No 8 of 2018 came into force, section 47 (1) of the LDCA was read as follows;

*47 (1) Any person who is aggrieved by the decision of the High Court (Land Division) in exercising its original, revisional, or appellate jurisdiction, may with the leave from the High Court (Land Division), appeal to the Court of appeal in accordance with the Appellate Jurisdiction Act."*

The court of Appeal in **Dero Investment vs. Heykel Berete**, Civil Appeal No. 92 of 2004 (unreported), explained the applicability of the old section 47 (1) of the LDCA. On page 5, it held that;

*"It is apparent from this provision that all appeals to the Court of Appeal from decisions of the Land Division of the High Court are by leave of the Land Division of the High Court. As submitted by both counsel, this is a marked departure from what is provided in section 5 (1) (a) of AJA as regards to civil proceedings.*

Therefore, that was the old position that made the requirement for leave to appeal even when the High Court exercised its original jurisdiction.

After the introduction of section 9 of the Written Laws (Miscellaneous Amendments) Act No 8 of 2018; section 47 (1) of the LDCA was amended, and the new section reads as follows;

*"47 (1) A person who is aggrieved by the decision of the High Court in exercise of its original jurisdiction may appeal to the Court of appeal in accordance with the Appellate Jurisdiction Act."*

Again, the Court of Appeal, in the cited case of **Hassan Kibasa (Supra)**, explained the applicability of the new section 47 (1) of the LDCA; it held that;

*"...leave is longer a pre-requisite for land matters arising from the High Court's exercise of its original jurisdiction following the amendment Of section 47 (1) of the LDCA by section 9 of the Written Laws (Miscellaneous Amendments) Act No 8 of 2018."*

Therefore, from both the old and current section 47 (1), it is quite clear that the Land Disputes' Courts Act No.2, Cap 216 R: E 2019 is instructive on the issues of leave to leave on land matters; it dictates and regulates the issue of leave to appeal on the land matters when the High Court exercising its original jurisdiction. On the other hand, section 5 of the Appellate Jurisdiction Act accommodates both scenarios when an appeal may lie with

leave or without leave. But that must be read together with the provisions of other written laws as per the wording in section 5 (1) that;

*"In civil proceedings, **except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal**"*[Emphasis provided]


to determine whether leave to appeal is a requisite, and in case of land matters, it must be read together with section 47 of the Land Dispute Courts Act.

Flowing from above, there is no doubt that the application for leave before this Court is improper, as per the cited case of **Hassan Kibasa (Supra)**. The applicant may go straight to appeal to the Court of Appeal in accordance with Section 47 (1) of the Land Disputes' Courts Act No.2, Cap 216 R: E 2019.

Consequently, I struck out this application, and since the matter was raised *suo motu*, I make no order as to costs.

It is so ordered.



  
**K. D. MHINA**  
**JUDGE**  
**30/03/2023**