

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

MISC. LAND CASE APPLICATION NO.655 OF 2023

(Originating from Misc. Land Appeal No.554 of 2019)

JOSEPHINE MICHAEL ZAMBO.....APPLICANT

VERSUS

**FARIDA BENARD CHIFUNDA(Administratrix of the Estate of the
ate Benard William Chifunda).....RESPONDENT**

RULING

Date of Last Order: 27.10.2023

Date of Ruling: 23.11.2023

T.N. MWENEGOHA, J

The applicant is seeking for a leave to appeal to the Court of Appeal of Tanzania, against the whole decision of this Court, given by Hon. Maghimbi J vide Misc. Land Application No.554 of 2019, dated 20th June 2020.

The Application was made under **section 5(1)(c) of the Appellate Jurisdiction Act, Cap 141 R.E 2019 and Rule 45 (a) and 47 of the Tanzania Court of Appeal Rules, of 2009**. It was accompanied by the affidavit of the Josephine Michael Zambo, the applicant herein above.

However, as I was composing this Ruling, I noted that, the case forming the basis of this Application, vide Misc Land Application No. 554 of 2019, originated from this Court. The same was an Application for extension of time, for the applicant above named, to be able to lodge an Application

to set aside an ex-parte Judgment, entered in Land Case No. 279 of 2014. This Court also raised an issue on the competence of this Application and ordered the parties to address it. Having so noted, this Court ordered the parties to address it on the competence of this Application, owing to the fact that, the Misc. Land Application No. 554 of 2019 was heard and determined by this Court in exercise of its original jurisdiction. The parties complied with the order. And I appreciate their effort to argue for and against the issue raised. For the purpose of serving this Court's time, I will not reproduce their arguments, rather the same will be incorporated direct in this Ruling.

The issue raised by this Court was whether leave is needed owing to the fact that, Misc. Land Application No.544 of 2019, originated from this Court.

The answer is found on the provisions **of section 5(1)(a) of the Appellate Jurisdiction Act, Cap 141, R.E 2019**, which is read together with **section 47(1) of the Land Disputes, Courts Act, Cap 216, R.E 2019**. I will reproduce the provisions of the two laws above, starting with section 47(1) of the Land Disputes, Courts Act, Cap 216, R.E 2019 as follows; -

47 (1) "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."

Then, section 5(1)(a) of the Appellate Jurisdiction Act, Cap 141, R.E 2019, provides; -

5.-(1) "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."

The question to be answered here, based on the records is whether the impugned Decree emanated from a suit under the Civil Procedure Code as required by **section 5(1)(a) of the Appellate Jurisdiction Act** (supra). The answer is yes, Misc. Land Application No.544 of 2019, was an Application for extension of time, where the applicant sought an enlargement of time to be able to file an Application to set aside an ex-parte Judgment of this Court, vide Land Case No. 279 of 2014. She presented her Application for extension of time through a chamber summons, supported by an affidavit. That is to say, the said case followed the directives given under order XLIII Rule 2 of the Civil Procedure Code, Cap 33 R.E 2023. Therefore, it was wrong to on the part of the applicant to file the instant case. Hence, the same is incompetent before this Court. For the above given findings, I proceed to struck out this Application with no order as to costs.



T. N. MWENEGOHA

JUDGE

23/11/2023