

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

MISC LAND APPLICATION NO. 727 OF 2023
(Arising from Land Appeal No. 267 of 2023)

ADAMU WAZIRI.....	1ST APPLICANT
MBWANA NJORA.....	2ND APPLICANT
JULIUS CHATANDA.....	3RD APPLICANT
YAHAYA SAIDI LYAMBO.....	4TH APPLICANT
MOHAMEDI HAMIS KIBALIKIO.....	5TH APPLICANT
HEMED ABDUL.....	6TH APPLICANT
ALLY WAZIRI.....	7TH APPLICANT
SAIDI MAPATANO MKUNGA.....	8TH APPLICANT
LENADI MAGOMBANO.....	9TH APPLICANT
SAIDI HEMEDI KIPALA.....	10TH APPLICANT
HAMIS ABDULI MKUMBA.....	11TH APPLICANT

VERSUS

MUSSA RAFIKI MALUA.....	RESPONDENT
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RULING

6/2/2024 to 13/3/2024

E.B. LUVANDA, J

This is an application for leave to appeal against the decision of this Court dated 29/09/2023. The grounds taken are: One, whether this Court was proper to hold that the Appellants are not the owners of the suit property since the evidence adduced doesn't describe the exact location of the allocated farms/pieces of land; Two, whether this Court was proper to hold that the suit

property is legally owned by the Respondent I absence of vivid evidence to prove his ownership.

The application was argued by way of written submission filed by Mr. Revocatus Sedede learned Counsel for Applicant and Mwami Mengo Kiozya learned Counsel for Respondent.

However, I will not deliberate on the merit of a docket in view of new development introduced vide The Legal Sector Laws (Miscellaneous Amendments) Act No. 11 of 2023 section 10 which made Amendment to the Appellate Jurisdiction Act, Cap 141 effectively 1st of December, 2023 in particular section 5 by deleting subsection (1) and substituting for it the following,

'In civil proceedings, except where any other written law provides otherwise, an appeal shall lie to the Court of Appeal against every order or decree, including an ex-parte or preliminary decree made by the High Court, in the exercise of its original, appellate or revision jurisdiction'

In the case of **Modestus Daudi Kangalawe (Administrator of the Estate of the Late Daudi Temaungi Kangalawe vs Dominicus Utenga**, Civil Reference No. 01 of 2022, CAT sitting at Iringa, at page 7 made it clear that currently the application for leave to appeal is not a legal requirement.

The same position was taken in **Petro Robert Myavilwa vs Zera Myavilwa & Another**, Civil Application No. 117/06 of 2022 CAT at Mbeya, at page 6 to 7, propounded,

'As alluded to earlier, the application at hand seeks for extension of time to apply for leave to appeal to Court so as to challenge the decree of the High Court when exercising its appellate jurisdiction in Probate Appeal No. 1 of 2018. The changes, being procedural law which its applicability has retrospective effect, has a bearing to the application at hand in my view. As rightly submitted by Mr. Chappa, leave is no longer a requirement at the wake of the said amendment. As such, this application has been overtaken by event and the only remedy is to struck it out as I hereby do'

Therefore, the application for leave to appeal is struck out for being overtaken by event. No order for costs.



E. B. LUVANDA
JUDGE
13/03/2024

Ruling delivered in the presence of Mr. Revocatus Sedede learned Counsel for Applicant and for Respondent



E. B. LUVANDA
JUDGE
13/03/2024