

**IN THE UNITED REPUBLIC OF TANZANIA
IN THE HIGH COURT OF TANZANIA
IN THE SUB-REGISTRY OF MTWARA
AT MTWARA**

MISC. LAND APPLICATION NO. 12 OF 2023

FATUMA SWALEHE NJOZI (An Administratrix of the estates of the late
SWALEHE HASSAN NJOZI)..... **APPLICANT**

VERSUS

SABITI HASSANI KAZUMALI **1ST RESPONDENT**

WERNER TARASISI CHIWEMI **2ND RESPONDENT**

RULING

13th & 16th February, 2024

EBRAHIM, J:

The applicant herein has filed the instant application seeking leave to file an appeal to the Court of Appeal. The application has been brought under **Section 5 (1) (c) of The Appellate Jurisdiction Act [CAP. 141 R.E. 2022]**, and **Rule 45 (a) of the Tanzania Court of Appeal Rules 2019**. The application is supported by the applicant's affidavit which

was contested by the counter affidavits deponed by the Respondents.

According to the affidavit of the applicant in a nutshell, the applicant was aggrieved with the decision of this court in Land Appeal No. 17 of 2022 therefore she wants to Appeal to the Court of Appeal of Tanzania. Hence this application.

By consent of the parties, this application was disposed of by way of written submission. Submitting her arguments in support of this application, the Applicant contended that she has a sufficient reason tenable to be granted leave to go to the Court of Appeal.

In a brief reply, the Respondents argued that the applicant had not demonstrated any good cause to warrant the Court of Appeal to grant leave to file an appeal. The applicant did not counter this as she did not opt to file a rejoinder.

I have considered the rival submissions of both parties, but before going to the gist of this application at hand. I am curious to know whether this application is still tenable.

I have gone through the amendment brought by the **section 10 of the Legal Sector Laws Miscellaneous Amendments, Act No. 11 of 2023 Laws, which amended section 5 of the Appellate Jurisdiction Act** which reads:

*"Section 10 The principal Act is amended in section 5
(a) By deleting subsection (1) and substituting for it the following:*

"(1) 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 revisional jurisdiction"

According to the above-cited provision, a leave to file an appeal to the Court of Appeal when the High Court exercised its original, appellate, or revisional jurisdiction against an order, decree, ex-parte decree, or preliminary decree is no longer a legal requirement.

In emphasizing this position, the Court of Appeal in the case of **Petro Robert Myavilwa vs Zera Myavilwa & Another** (Civil Application No. 117/06 of 2022) made the following observations:

"It is my interpretation, basing on the above exposition that, the changes have done away with.

leave requirement for one to appeal to Court against the decision of the High Court regardless of whether the impugned decision is an order, decree, an ex-parte decree or a preliminary decree when exercising its original, appellate or revisional jurisdiction. In other words, obtaining leave has ceased to be a requisite before one can appeal to Court effective the 1st December, 2023."

Given the above legal position it is my considered opinion that the changes, being procedural law which its applicability have a retrospective effect has resulted for this Application to have been overtaken by the operation of the law. I hereby dismiss this application without costs.

Order accordingly




R.A Ebrahim
Judge.

16.02.2024
Mtwara.