**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**ARUSHA SUB - REGISTRY**
**AT ARUSHA**

**MISC. LAND APPLICATION NO. 91 OF 2023**
(C/F High Court of Arusha in Land Appeal No 169/2022, Originating from District Land and Housing Tribunal for Manyara at Babati, Application No. 29/2019)

**ALFRED NGENI ..... APPLICANT**

***Versus***

**REGISTERED TRUSTEES OF THE FREE**

**PENTECOSTAL CHURCH OF TANZANIA ..... RESPONDENT**

**RULING**

28th February & 19th April 2024

**Masara, J**

The Applicant herein, one Alfred Ngeni, brought this Application under the provisions of section 47(2) of the Land Dispute Courts Act, No. 2 of 2002, craving for leave to appeal against the decision of this Court in Land Appeal No 169 of 2022 (Kamuzora, J) which was delivered on 27th July 2023. The Application is supported with the affidavit deponed by Erick Laurent Shauri, the Applicant's advocate. The Respondent contested the Application through the counter affidavit deponed by Jenipher John, the Respondent's advocate.

(Miscellaneous Amendments) Act, No. 11 of 2023, which amended Section 5(1) of the Appellate Jurisdiction Act, Cap. 141, it is no longer a legal requirement for one to obtain leave to appeal from a decision of this Court. He also referred to the decision in the case of **Athuman Mdilya vs Gerald Singano Magill, Misc. Land Application No. 26980 of 2023 HC at Dodoma** to support his position.

Mr Laurent further submitted that, although the current Application was filed before the said amendments came into force, the said amendments apply to this Application retrospectively. That, the Court should, as a matter of course, grant the Application as craved in order to pave way for the Applicant to prefer the Appeal.

Contesting the Application, Ms John, on the contrary, prayed that this Application be either struck out or dismissed, as leave is no longer a legal requirement. She also sought to rectify what her counter party had submitted regarding the name of the law and the amendments made. She conferred that the correct amendments were deletion of section 47(2) of the Land Disputes Court Act [ Cap. 216 R.E 2019], which section previously required for an application of this nature.

Both parties, through their advocates, agree that leave to appeal to the Court of Appeal against a decision of this Court was effectively abolished by the Amendments made by the cited laws on the Land Disputes Courts Act, Cap. 216 (R.E. 2022). Submitting in support of this position, Mr Laurent averred that the amendments in question relates to Section 5(1) of the Appellate Jurisdictions Act, Cap. 141. On the contrary, Ms John, for the Respondent, contended that the proper provision was the deletion of Section 47(2) of the Land Disputes Courts Act.

Section 10 of The Legal Sector Laws (Miscellaneous Amendments) Act, No. 11 of 2023 amended Section 5(1) of the Appellate Jurisdiction Act as follows:

> "*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.'"* (Emphasis added)

As correctly argued by Ms John, the above cited amendments cannot be taken to be a basis for abolition of the requirement for leave as the same subjects the intended appeal on other written laws.

Both advocates submitted that the amendments in question apply retrospectively. They only differ on what order this Court ought to give. While Mr Laurent urges the Court to grant leave as a matter of course, Ms John is of the view that granting leave is both unnecessary and an exercise in futility.

I agree with Ms John. The amendments to the law on procedure operates retrospectively. Granting of leave on a matter that does not require leave is, to me, both unnecessary and an exercise in futility. The current application is overtaken by event. The Applicant should forthwith exercise his right of appeal, if he still so wishes.

Before I conclude, I feel obliged to determine the issue of costs as craved. Ms John urged that the Applicant pays costs arising from the Applicant's Advocate's failure to disclose the amendments to the law as soon as the amendments came into force. That, by requesting parties to file written submissions, the Applicant made the Respondent to incur unnecessary costs that should be recovered from the Applicant. I have keenly considered this request. Generally, costs should follow the event, unless for good reasons the Court thinks otherwise. In this Application, were it not for the operation of the law, there is a possibility that the Application

be laid on Counsel for the Applicant alone. Thus, I decline to grant the requested costs on that basis.

In the upshot, I find the current Application moot, the same having been overtaken by events; namely, developments in the law which have since abolished the requirement of leave to appeal to the Court of Appeal on matters originating from the High Court in the exercise of its original, appellate or revisional jurisdiction. The Application is accordingly struck out with no order as to costs.

It is so ordered.

**Y.B. Masara**

**JUDGE**

April 19, 2024