

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT PAR ES SALAAM
MISC. LAND APPLICATION NO. 759 OF 2022**

(Arising from Misc. Land Application No. 380 of 2022)

HENRY LUIS CURPANEN APPLICANT

VERSUS

**TANZANIA HIGH LEARNING INSTITUTION TRADE
UNION/DAR ES SALAAM UNIVERSITY COLLEGE OF
EDUCATION (THIT/DUCE) RESPONDENT**

RULING

Date of last Order: 09.02.2023

Date of Ruling 16.02.2023

A.Z.MGEYEKWA, J

I am called upon in this matter to decide whether this court should exercise its discretion under section 47 (2) of the Land Disputes Court Act, Cap. 216 [R.E 2019] to grant leave to appeal to the Court of the Appeal against the decision of this Court in Land Application No. 380 of 2022. The Application is premised on the grounds appearing on the Chamber Summons together with the

supporting affidavit of Luis Francis holding power of attorney for the applicant sworn 28th November, 2023. The Application is contested. The respondent filed the counter affidavit of Joster Lameck Nzilano, Secretary General of the respondent sworn on 8th January, 2023.

When the matter was called for hearing on 9th February, 2022, the applicant had the legal service of Mr. Majura Madafu, learned counsel, and the applicant enjoyed the legal service of Ms. Neema Masame, learned counsel.

Before summarizing the applicant's submission, this Court noted a point of law. *Suo motu*, I prompted the parties' counsels to address the Court on the appropriateness of the instant application because I noted that the matter originated from the decision of this Court whereas Hon. Msafiri, J refused to grant an extension of time to the applicant to appeal to the Court of Appeal.

The learned counsel for the applicant submitted that the Application before this Court is for leave to appeal to the Court of Appeal against the decision of this Court after refusing to grant an extension of time to file an appeal. He stated that there is no automatic right to file an appeal to the Court of Appeal against the decision of this Court in refusing an extension of time, however, the only alternative is to seek leave from High Court to go to the Court of Appeal. The learned counsel for the respondent had not much to say, she rather decided to leave the matter in the hands

of this Court to decide.

Having heard the submissions of both counsels, I have to say that the application before this Court is incompetent since leave to appeal is no longer a prerequisite for matters arising from the High Court's exercise of its original jurisdiction following the amendment of section 47 (1) of the Land Disputes Courts Act, Cap. 216 by section 9 of the Written Laws (Miscellaneous Amendments) (No. 3) Act, No. 8 of 2018. For ease of reference, I reproduce section 9 (1) of the Written Laws (Miscellaneous Amendments) (No. 3) Act, No. 8 of 2018 hereunder:-

“ 9 (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.”

In the case of **Hassan Kibasa v Angelesia Chang'a**, Civil Application No. 405/13 of 2018, this Court faced a similar situation, the applicant was seeking leave to appeal to the Court of Appeal of Tanzania against the refusal of an extension. The Court of Appeal of Tanzania in its Ruling stated that:-

"... leave to appeal is no longer a prerequisite for land matters arising from the High Court's exercise of its original jurisdiction..."

Based on the above findings, law and authority, it is clear that the application before this Court is incompetent.

In the upshot, I find that this application for leave to appeal against the decision of this Court is misconceived. Therefore, I restrain myself from determining the instant application knowing that the applicant's application cannot succeed. I proceed to strike out Misc. Land Application No. 759 of 2022 No order as to costs.

Order accordingly.

Dated at Dar es Salaam this 16th February, 2023.



Ruling delivered on 16th February, 2023 in the presence of both counsels.

A.Z. MGEYEJ KWA

JUDGE

16.02.2023



A.Z. MGEYEKWA

JUDGE

16.02.2023