

IN THE HIGH COURT OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISC. LAND APPLICATION NO. 11 OF 2023

*(Arising from Land Case Appeal No. 7/2022 before Hon. Mwenempazi, J. and originated from
Land Application No. 4/2020 in the District Land and Housing Tribunal for Rukwa at
Sumbawanga)*

NELI MBWILO.....APPLICANT

VERSUS

ROICE CHUNJI.....RESPONDENT

RULING

20th March, 2024

MRISHA, J.

The applicant **Neli Mbwiolo** felt aggrieved with the decision of the High Court, Sumbawanga District Registry in respect of the Land Appeal case No.7 of 2022 which was delivered on 20th July, 2023 in favor of the respondent.

The application was brought by way of chamber summons under section 47(1) (c) of the Appellate Jurisdiction Act, 1979 and Rule 45(a) of the Tanzania Court of Appeal Rules [Cap 141 R.E 2019]. It is also supported by the affidavit duly

sworn by the applicant who has averred among other things, that he is aggrieved by the decision of the Court and wishes to appeal to the Court of Appeal against the decision of the High Court, however the same cannot be attained unless by leave of this Court henceforth this application.

Further, he has averred that the proceedings, judgment and decision of this Court and trial tribunal reveals important disturbing features which necessitates the intervention of the Court of Appeal to determine them; these can be seen at paragraph 6 (i), (ii), (iii) and (iv) of the applicant's affidavit.

In reply, the respondent filed counter affidavit and notice of preliminary objection with two grounds in his counter affidavit; the respondent has strongly disputed her adversary by stating that leave is not arbitrarily delivered unless sufficient reasons are given to that effect.

When this matter came for hearing, the applicant was absent while the respondent was present and enjoyed the service of Mr. Chambi, learned Advocate who prayed to this court to struck out the application with costs because the applicant absented himself without notice while he was aware about the date of hearing scheduled by the court.

The above being the submission of the counsel for the respondent, it is my considered opinion that where on the day fixed for hearing of an appeal or

application, the applicant does not show appearance, the remedy thereto is either to adjourn the matter for another date or dismiss the application for want of prosecution, as it is provided under Order XXXIX, Rule 17 (1) of the Civil Procedure Code, Cap 33 R.E. 2019.

However, since I am aware of the current amendment of the law relating to leave to appeal to the Court of Appeal on matters relating to land, I will not dismiss or adjourn the matter, but proceed to dispose of the present application on a different approach.

The Legal Sector law (Miscellaneous Amendment) Act No. 11 of 2023 which came into effect on 1st December, 2023 amended section 5 of the Appellate Jurisdiction Act, [Cap 14 R.E. 2023] henceforth the AJA, by deleting section 5(1) of AJA and substituting for it the following provisions: -

"(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 revision jurisdiction".

From the above provisions of the law, it is crystal clear that obtaining leave of the High Court to appeal 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, is no longer existing as it has been overtaken by the operation of the new amendment, see **Director of Public Prosecutions v. Jackson Sifael Mtares**, Criminal Appeal No. 2 of 2018 (2018) TZCA 393 (20th March, 2024).

In the circumstances and given the fact that procedural laws are retrospective in the sense that they apply to all actions after the date they come into force even though the action may have begun earlier or the claim on which action may be based accrued on an anterior date, I am of the firm view that this application is over taken by events and therefore bound to be struck out for being affected by the operation of the law, as stated above.

Hence, based on the reasons given above, I hereby struck out the present application with no order as to costs.

It is so ordered.


A.A. MRISHA
JUDGE
20.03.2024

DATED at SUMBAWANGA this 20th day of March, 2024.




A.A. MRISHA
JUDGE
20.03.2024

ORIGINAL