

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 42 OF 2015

NURU OMARY LIGALWIKE APPLICANT

VERSUS

KIPWELE NDUNGURU..... RESPONDENT

(Application for extension of time from the decision

of the High Court of Tanzania

at Dar es salaam)

(Ndika, J.)

Dated 18th day of August, 2015

In

Land Case No. 12 of 2005

RULING

15th & 21st July, 2015

JUMA, J.A.

On 4th March, 2015, the applicant Nuru Omary Ligalwike lodged a notice of motion under Section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 (**AJA**), Rules 10, 45 (b), 48 (1) and (2) of the Tanzania Court of Appeal Rules, 2009 (**the Rules**) by which she sought two orders. Firstly, she sought an extension of time to apply for leave to appeal. Secondly, she prayed for leave to appeal against the proceedings, judgment and decree

of the High Court of Tanzania (Land Division) at Dar es Salaam (Ndika, J.) in Land Case No 12 of 2005.

The application is supported by the applicant's affidavit affirmed on 25th February 2015. In the affidavit, the applicant furnishes some background to the dispute over a fifteen-acre farmland at the village of Kwembe, Kinondoni District of Dar es Salaam. It was the respondent, Kipwele E.O. Ndunguru, who initiated the matters in court when he filed a suit, Land Case No. 12 of 2005 in the Land Division of the High Court at Dar es Salaam wherein he urged the High Court to declare him to be the owner of the disputed land. On 18th August, 2014 Ndika, J. delivered the judgment of the High Court which declared the respondent to be the rightful owner of the disputed land.

According to the applicant, she was dissatisfied with the decision of the High Court and instructed Mr. H.H. Mtanga, her learned advocate, to file an appeal in the Court of Appeal. She however found herself out of time because Mr. Mtanga did not initiate any appeal. Being a lay person, it took her up to 11th February, 2015 when another advocate, Leonard T.

Manyama, explained to her the necessity of obtaining prior leave before appealing to this Court.

In response to the application, the respondent filed his affidavit in reply on 28th May, 2015 to oppose this motion.

When the motion came up for hearing on 15th July, 2015, I first prompted the two learned advocates, Mr. Leonard Manyama (for the applicant) and Mr. Melchisedeck Lutema (for the respondent), to address the question whether, being aggrieved with the decision of the High Court sitting as a 'land court', it was appropriate for the applicant to move this Court under paragraph (c) of section 5 (1) of AJA.

Mr. Manyama submitted that this motion for extension of time to apply for leave is properly before the Court. To support his stance he cited a decision of the High Court in **Awiniel Mtui and Three Others vs. Stanley Ephata Kimambo**, Misc. Civil Application No. 34 of 2014 (unreported) where Massengi, J. had relied upon a decision of the Court in **Tanzania Electric Supply Company Ltd vs. Dowans Holding (Costa Rica) Dowans Tanzania Ltd**, Civil Appeal No. 142 of 2012 (unreported) to state the principle that once a notice of appeal has been lodged to

initiate an appeal to this Court, the High Court ceases to have jurisdiction to entertain an application for leave to appeal.

On his part, Mr. Lutema submitted that the applicant should have been guided by section 47 (1) of the Land Disputes Courts Act, CAP. 216, R.E. 2002 (hereinafter referred to as the Land Courts Act). This provision, he added, governs leave to appeal to this Court from land disputes originating from the High Court. He submitted that High Court is vested with statutory jurisdiction to grant leave over land disputes. To that end, the applicant should have sought that extension of time to apply for leave in that same High Court. He pointed out that it would be absurdity for the extension of time to seek leave to be sought in the Court of Appeal in order to go back to the High Court to seek the leave under section 47 (1) of the Land Courts Act. Mr. Lutema urged me to advise the applicant to go back to the High Court to seek an extension of time before applying for the leave from the same High Court.

From submissions of the learned advocates, the bottom-line issue calling for my determination is whether the cited section 5 (1) (c) of AJA vests this Court with jurisdiction to determine an application for extension

of time within which to apply for leave to appeal against the decision of the High Court in exercise of jurisdiction of a 'land court'. Section 5 (1) (c) states:

5 (1) In civil proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal—

(a)...

(b)...

*(c) with **leave of the High Court or of the Court of Appeal**, against every other decree, order, judgment, decision or finding of the High Court. [Emphasis added].*

It is quite apparent that the applicant believes the phrase- "**leave of the High Court or of the Court of Appeal**," gives an applicant a choice of forum to apply for leave to appeal from the decision of the High Court sitting as a "land court" under the Land Courts Act. With respect, I agree with Mr. Lutema that the applicant cannot choose to come to this Court to

Morris Hamza Azizi and Another vs. Angelina Simon Mhavile and Another, Civil Appeal No. 73 of 2013 (unreported) the Court dealt with an appeal arising from a land dispute which originated in the High Court of Tanzania in exercise of its original jurisdiction. The Court also determined the question whether such an appeal against the decision of the High Court as a land court required prior leave of the High Court under section 47 (1) of the Land Courts. The Court reiterated that the words “**except where any other written law for the time being in force provides otherwise**” in section 5 (1) (c) imply that the AJA is not the only written law that provides for the statutory right to appeal to the Court. The Court reiterated that section 5 (1) leaves open to **other written laws** to enact statutory rights for appealing to the Court:

“...The Land Courts Act is also an example of a written law envisaged under section 5 (1) of the Appellate Jurisdiction Act. Section 48 Land Courts Act provides an avenue for appealing to the Court in the following way:

*48.-(1) Subject to the provisions of the Land Act, 1999 and Village Land Act, 1999 the **Court of***

Appeal shall have jurisdiction to hear and determine appeals from the High Court.

(2) The Appellate Jurisdiction Act, 1979 shall apply to proceedings in the Court of Appeal under this section.

[Emphasis added].

Reading section 48 together with the preceding section 47 (1), it seems to us clear that the intention of the legislature was to make the statutory right of appeal conditional and dependent on appellant obtaining leave of the High Court. Section 47 (1) of Land Courts Act states:

*47.-(1) Any person who is aggrieved by the decision of the High Court in the exercise of its original, revisional or appellate jurisdiction, may **with the leave from the High Court appeal to the Court of Appeal** in accordance with the Appellate Jurisdiction Act, 1979. [Emphasis added]..."*

It clearly seems to me that section 5 (1) (c) of AJA which the applicant cited, does not apply to regulate leave to appeal over land disputes arising from exercise of jurisdiction land courts under the Land Courts Act. The applicant should not have come to this Court to seek leave

Courts Act exclusively vests that jurisdiction on the High Court. Leave of the High Court is a mandatory requirement before an appeal can lie to this Court on matters governed by the Land Courts Act. In this regard, Mr. Lutema is entitled to submit that it is the High Court which the applicant should have approached to seek an extension of time to apply for leave.

In the final analysis, by invoking section 5 (1) (c) of AJA to come to this Court to seek an extension of time to apply for leave instead of moving the High Court, this application is misconceived. It is hereby struck out with costs.

DATED at DAR ES SALAAM this 15th day of July, 2015.

I.H. JUMA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL