IN THE COURT OF APPEAL OF TANZANIA

AT ARUSHA

CIVIL APPLICATION NO. 132/02/2018

LALA WINO ..... APPLICANT

VERSUS

KARATU DISTRICT COUNCIL ..... RESPONDENT

(Application for extension of time within which to apply for leave to appeal from the Judgment and Decree of the High Court of Tanzania at Arusha)

(Maghimbi, J.)

dated the 1st day of August, 2016

in

Land Case No. 71 of 2014

.....

RULING

29th March & 3rd April, 2019

NDIKA, J.A.:

On 10th April, 2018, the applicant, Lala Wino, applied by a notice of motion under Rule 10 of the Tanzania Court of Appeal, 2009 against Karatu District Council, the respondent herein, for extension of time within which to lodge an application for leave to appeal to this Court against the judgment and decree of the High Court at Arusha in Land Case No. 71 of 2014. The application is a second bite, so to speak, following the dismissal by the High Court (Moshi, J.) of an initial application for extension of time.

When the matter came up for hearing, Mr. Qamara Aloyce Peter, learned counsel, appeared for the applicant. There was no appearance on the part of the respondent who was served with the notice of the hearing through its Solicitor on 12th February, 2019. The affidavit of service deposed by Mr. David Millia, a Court Process Server, dated 13th February, 2019 bears testimony of that fact. Upon the applicant's prayer, I ordered the hearing to proceed under Rule 63 (2) of the Rules in the absence of the respondent.

Ahead of hearing the matter on its merits, I asked the applicant to address me on the effect on the matter of the recent 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, 2018, Act No. 8 of 2018 published on 25th September, 2018. The said provision now reads as follows:

> *"A person 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 terms of section 5 (1) (a) of the Appellate Jurisdiction Act, Cap. 141 RE 2018 so far as it is applicable to a land dispute, an appeal would lie as of right from any decision of the High Court in the exercise of its original jurisdiction over a land matter. Previously, section 47 (1) of Cap. 216 (*supra*) made leave of the High Court a mandatory requirement for any appeal to this Court arising from the High Court's exercise of its own original jurisdiction over a land matter. The said provision, then and there, stated thus:

> *"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."* [Emphasis added]

Admittedly, the application, having been lodged on 10th April, 2018, preceded the amendment under consideration. In terms of section 14 of the Interpretation of Laws Act, Cap. 1 RE 2002, the said amendment took effect subsequently on the date of publication in the Gazette of Act No. 8 of 2018 (that is, 25th September, 2018).

In his very brief submission to me, Mr. Peter argued that the amendment concerned, even though it was made after the present application was filed, covers the present appeal, implying that the applicant could now proceed to lodge his appeal as of right. While conceding that the present application was obviously an exercise in futility he sought the guidance of the Court on the matter as he contended that withdrawing the application would not be the proper course.

I agree with Mr. Peter that the present application has been overtaken by events. The applicant's intended appeal falls under the purview of the procedural amendment alluded to earlier and that it would lie to this Court as of right without the necessity of the leave of the High Court. In demonstrating this position, I wish to begin by citing with approval a holding made by the High Court (Hamlyn, J.) in **Benbros Motors Tanganyika Ltd. v. Ramanlal Haribhai Patel** [1967] HCD n. 435 that: -

> *"When a new enactment deals with rights of action, unless it is so expressed in the Act, an existing right of action is not taken away,* ***but when it deals with procedure only, unless the contrary is expressed, the enactment applies to all***

actions, whether commenced before or after the passing of the Act." [Emphasis added]

The same position was subsequently taken by this Court in **Makorongo v. Consigilio** [2005] 1 EA 247. In that case, the Court quoted with approval the statement of principle made by Newbold, J.A. of the defunct East Africa Court of Appeal in the case of **Municipality of Mombasa v. Nyali Limited** [1963] EA 371, at 374 that:

> *"Whether or not legislation operates retrospectively depends on the intention of the enacting body as manifested by legislation. In seeking to ascertain the intention behind the legislation the Courts are guided by certain rules of construction. One of these rules is that if the legislation affects substantive rights it will not be construed to have retrospective operation unless a clear intention to that effect is manifested;* ***whereas if it affects procedure only, prima facie it operates retrospectively unless there is good reason to the contrary.*** *But in the last resort it is the intention behind the legislation which has to be ascertained and a rule of construction is only one of the factors to which regard must be had in order to ascertain that intention."* [Emphasis added]

I am further guided by the more recent decision of the Court in the **Director of Public Prosecutions v. Jackson Sifael Mtares & Three Others**, Criminal Application No. 2 of 2018 (unreported) which followed the standpoint in **Makorongo v. Consigilio** (*supra*). In **Jackson Sifael Mtares** (supra), the Court cemented that position by excerpting from a book of the learned author A.B. Kafaltiya bearing the title *"Interpretation of Statutes"*, 2008 Edition, Universal Law Publishing Co., New Delhi – India, at page 237 the following passage:

> *"No person has a vested right in any course of procedure, but only the right of prosecution or defence in the manner prescribed for the time being, by or for the court in which he sues. When the legislature alters the existing mode of procedure, the litigant can only proceed according to the altered mode. It is well settled principle that 'alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be.' The rule that 'retrospective effect is not to be given to laws' does not apply to statutes which only alter the form of procedure or the admissibility of evidence.* ***Thus amendments in the civil or criminal trial***

procedures, law of evidence and limitation etc., where they are merely the matters of procedure, will apply even to pending cases. *Procedural amendments to a law, in the absence of anything contrary, 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.*** *Where a procedural statute is passed for the purpose of supplying an omission in a former statute or for explaining a former statute, the subsequent statute relates back to the time when the prior statute was passed.* ***All procedural laws are retrospective, unless the legislature expressly says they are not."***

In the premises, I am of the firm view that the amendment of section 47 (1) of Cap. 216 (*supra*) is retrospective on two grounds: first, it pertains to the procedure governing the exercise of the right of appeal to this Court in respect of a land matter arising from the original exercise of the jurisdiction of the High Court. Secondly, the amendment contains no express stipulation limiting the ostensible retroactivity of that new provision.

In consequence, even though both the judgment the subject of the intended appeal and the present application preceded the amendment at hand, the applicant's intended appeal would no longer be subject to obtaining leave of the High Court to appeal to this Court. In the premises, the applicant's present pursuit for extension of time to apply for leave to appeal is of no useful purpose; it has been overtaken by events. That apart, even if, for the sake of argument, the applicant were granted the extended time prayed for, he would find no competent forum that could legally take cognizance of his intended application for leave to appeal. For as the law stands here and now following the amendment under consideration, the High Court no longer has the requisite jurisdiction to consider and grant leave to appeal to this Court from the decision the subject of this matter.

In addition, I find it apt to point out that as recent as 26th March, 2019 a single Justice of the Court in **Rebecca Wegessa Isaack v. Tabu Msaigana & Another**, Civil Application No. 444/08/2017 (unreported) faced an analogous situation. In that case, the Court acceded to the applicant's uncontested prayer for the withdrawal of her application for extension of time to apply for leave to appeal on the same reasoning that

the matter had been overtaken by events on account of the amendment under consideration.

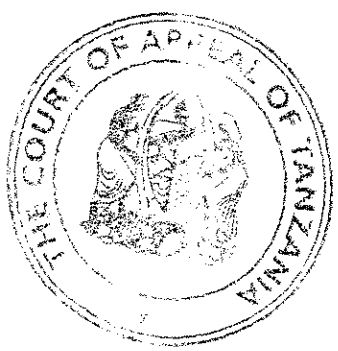
In the upshot, having found that the matter has been overridden by the amendment of section 47 (1) of Cap. 216 (*supra*) as I have demonstrated above, I am enjoined to strike out this matter, as I hereby do. In furtherance of fairness and equity, I make no order as to costs taking into account that none of the parties has had a hand in the outcome of this matter.

It is so ordered.

DATED at **ARUSHA** this 1st day of April, 2019.

G. A. M. NDIKA
JUSTICE OF APPEAL

I certify that this is a true copy of the original



E. F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL