

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE SUB-REGISTRY OF MWANZA)**

AT MWANZA

MISC. LAND APPLICATION NO. 38 OF 2021

(Arising from Misc. Civil Cause No. 4 of 2021)

**LWEMPISI GENERAL COMPANY LTD.....1ST APPLICANT
CHARLES KAHATANO LWEMPISI.....2ND APPLICANT
MUGANYIZI TIBARUNGI RUGAKO.....3RD APPLICANT
ESTHER CHARLES JOSEPH.....4TH APPLICANT**

VERSUS

RICHARD JOSEPH KWEYAMBA RUGALABAMU.....RESPONDENT

R U L I N G

1st Sept. & 5th October, 2022

DYANSOBERA, J.:

This is an application for leave to appeal to the Court of Appeal of Tanzania against the decision and orders of the High Court of Tanzania (Mwanza District Registry) at Mwanza in Misc. Civil Cause No. 4 of 2021 dated 20th April, 2022.

The application has been preferred under section 5 (1) (c) of the Appellate Jurisdiction Act [Cap.141 R.E.2019] and Rue 45 (a) of the Court of Appeal Rules and is supported by affidavit affirmed by Abdallah Kessy Abdallah, the applicants' learned Counsel.

The respondent has filed a counter affidavit in resisting the application.

On 1st day of September, 2022 when this application came up for hearing, learned Counsel Mr. Abdallah Kessy Abdallah represented the applicants while Mr. Anthony Nasimire stood for the respondent.

In essence, learned Counsel is confident that the applicant has complied with the legal requirements by citing the above provisions of law taking into account that the law is silent on the procedure of appealing.

On his part, the learned Counsel for the respondent questioned the competence of this application of two prongs. One, that the leave of the High Court is not a legal requirement for a party to go to the Court of Appeal. It was the Counsel's contention that the impugned decision was given by this Court in its original jurisdiction. Two, that the impugned decision was delivered by Mr. Tengwa, SRM with extended jurisdiction and the case which is the basis of this judgment was filed in the Resident Magistrate of Mwanza and therefore, the court clothed with jurisdiction to entertain this application is the said court and not this High Court. Counsel for the respondent relied on the case of **Alonda Ekara v. R.**, Criminal Appeal No. 1 of 2020 (unreported) to support his argument.

In his rejoinder, Counsel for the applicant complained that Counsel for the respondent introduced somehow a point of jurisdiction of this court it was not part of counter affidavit.

Counsel refuted the argument raised by Counsel for the respondent that there is no requirement of seeking leave to appeal to the Court of Appeal and relied on Section 5 (1) (c) of the AJA.

It is trite that jurisdiction is such an important matter that it can be raised at any stage of the proceedings and even on appeal. If that is the case, then I see nothing wrong for the learned Counsel for the respondent to raised it at this stage. In that respect, I have first to determine first if this court has jurisdiction to entertain this application before determining the first issue that is whether there is legal requirement for the applicant to seek leave of this court to go to the Court of Appeal.

I align with Mr. Nasimire that this court has no jurisdiction to entertain this application. There is no dispute that the leave the applicant is seeking is in respect of Miscellaneous Civil Cause No. 4 of 2021 determined by Hon. C.M. Tengwa, SRM with Extended Jurisdiction. Although the said matter was initially filed in the High Court registry, it was later transferred to the Resident Magistrate's Court to be tried by a Resident Magistrate upon whom jurisdiction had been extended. The matter was removed from the Registry of the High Court and filed in the Registry of the Resident Magistrate's Court of Mwanza. For that reason, it is improper for this court to entertain this application on a matter which

is not in the High Court Registry but was transferred to the Resident Magistrate's court and heard by the Resident Magistrate upon whom extended jurisdiction had been transferred.

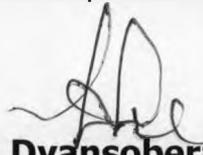
For that reason, this court lacks jurisdiction to entertain this application and order that the application be struck out.

No order as to costs.



W.P. Dyansobera
Judge
5.10.2022

This ruling is delivered at Mwanza under my hand and the seal of this Court on this 5th day of October, 2022 in the presence of Mr. Mwanaupanga holding brief for Advocate Abdallah Kessy for the applicant and Mr. Patrick Suluba, learned Counsel holding brief for Mr. Anthony Nasimire, learned Counsel for the respondent.



W.P. Dyansobera
Judge