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**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISCELLANEOUS LAND APPLICATION NO. 647 OF 2023
(Arising from Consolidated Land Case No. 15/2021 & 233/2021,
Misc Land Applications No. 501/2022 & 557/2022)

GENOVEVA N. KILIBA t/a DAGE

SCHOOL OF HAIR DRESSING & DECORATION.....APPLICANT

VERSUS

ABDULLAH RASHID ABDULLAH.....RESPONDENT

RULING

11th to ¹⁹20th December, 2023

E.B. LUVANDA, J

The Applicant above is seeking for extension of time within which to apply for leave to appeal to the Court of Appeal against the judgment of this Court dated 25/04/2023 in Misc. Land Application No. 501 & 557 of 2021, refusing to set aside dismissal order in Consolidated Land Case No.15/2021 & 233/2021.

In the affidavit in support, the Applicant grounded to have been attributed to delayment to be supplied with certified copies of proceedings and miscommunication with her Counsel.

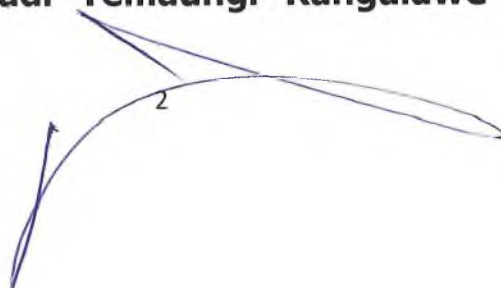
In the counter affidavit of the Respondent accused the Applicant for being negligence, queried as to how she managed to file a notice of appeal within time and failed to file an application for leave within time.

Mr. Abubakar Salim learned Counsel for Applicant filed submission in support of the application, and Mr. Maunda Raphael learned Counsel for Respondent filed a reply.

However, I will not deliberate on the merit of a docket in view of new development introduced vide The Legal Sector Laws (Miscellaneous Amendments) Act No. 11 of 2023 section 10 which made Amendment to the Appellate Jurisdiction Act, Cap 141 effectively 1st of December, 2023 in particular section 5 by deleting subsection (1) and substituting for it the following

'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'

In the case of **Modestus Daudi Kangalawe (Administrator of the Estate of the Late Daudi Temaungi Kangalawe vs Dominicus**

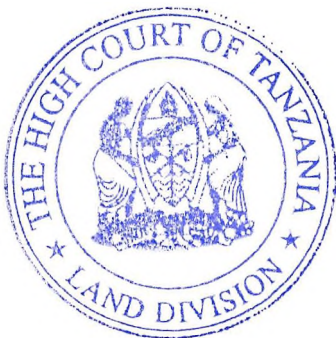


Utenga, Civil Reference No. 01 of 2022, CAT sitting at Iringa, at page 7 made it clear that currently the application for leave to appeal is not a legal requirement.

The same position was taken in **Petro Robert Myavilwa vs Zera Myavilwa & Another**, Civil Application No. 117/06 of 2022 CAT at Mbeya, at page 6 to 7, propounded,

'As alluded to earlier, the application at hand seeks for extension of time to apply for leave to appeal to Court so as to challenge the decree of the High Court when exercising its appellate jurisdiction in Probate Appeal No. 1 of 2018. The changes, being procedural law which its applicability has retrospective effect, has a bearing to the application at hand in my view. As rightly submitted by Mr. Chappa, leave is no longer a requirement at the wake of the said amendment. As such, this application has been overtaken by event and the only remedy is to struck it out as I hereby do'

Therefore, the application for leave to appeal is struck out for being overtaken by event. No order for costs.



E.B. LUVANDA
JUDGE
20/12/2023

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