

TANZANIA / JUDGMENT

venance sililo kapele vs john lucas msanganzila another 2024 tzhc 395 22 february 2024

COURT
TZHCDECIDED
22 February 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA SUM BA WANG A DISTRICT
REGISTRY AT SUMBAWANGA MISC. LAND APPLICATION NO. 27312 OF 2023 (Arising from the
decision of High Court of Tanzania at Sumbawanga in Land Appeal No. 1C of 2023) VENANCE
SILILO KAPELE APPLICANT VERSUS JOHN LUCAS
MSANGAZILA..... 1st RESPONDENT JUMAJEGI..... 2ND RESPONDENT
22/02/2024 & 22/02/2024

RULING

MWENEMPAZI, J. In this application the applicant, is aggrieved by the judgement of this court (Hon. Mwenempazi, J.) delivered on the 20th September, 2023. Hence, he filed this application for leave to appeal to the Court of Appeal. The application is made under section 47(2) of the Land Disputes Courts Act, Cap. 216 R.E.2019. Recently, a law has been enacted, Legal Sector Law (Miscellaneous Amendments) Act, No. 11 Of 2023 which came into effect on 1st December, 2023. Section 10 of the said Act, amends section 5 of the Appellate jurisdiction Act, [Cap 141 R.E.2023], repeals section 5(1) by deleting it and substituting for it the following: - "(1) in civil proceedings except where any other written law provides otherwise, an appeal shall be 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 revisional jurisdiction" The changes featured in the quoted provision of law, have done away with the requirement of leave for one to appeal to the court of appeal against any decision of the high court, regardless of whether the impugned decision is an order, decree, and ex parte decree or a preliminary decree when exercising its original, appellate or revisional jurisdiction. In other words, obtaining leave has ceased to be a requirement for one to appeal to the court of appeal effectively from 1st December, 2023. Since the changes have a bearing on procedure law, the applicability of changes has a retrospective effect as well. In case of Director of Public Prosecution (DPP) Vs. Jackson Sifaei Mtares (Criminal Appeal No. 2 of 2018) [2018] TZCA 393 (7 September 2018) it was held that: - "Procedural amendments to a law, in absence of anything contrary, are retrospective in the sense that they apply to all actions after the date they came into force even though the actions may have begun

earlier or the claim on which the action may be based occurred on the anterior date" Based on the position, this application is overtaken by events and it is unnecessary step to be taken by a litigant. For that matter the application is struck out with no order as to costs. It is ordered accordingly. Dated and delivered this 22nd February, 2024. T.M. MWENEMPAZI JUDGE 3 Ruling delivered this 22nd February, 2024 in the presence of Ms. Neema Charles, Advocate for the applicant and the Respondents. 4

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