

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT MOSHI**  
**CIVIL APPLICATION NO. 322/05 OF 2022**  
**(CORAM: JUMA, C.J., NDIKA, J.A. And KITUSI, J.A.)**

**KIBO CORRIDOR LIMITED.....APPLICANT**

**VERSUS**

**RAVJI INVESTMENTS COMPANY LIMITED.....RESPONDENT**

**(Application from the Judgment and Decree of the High Court of  
Tanzania, at Moshi)**

**(Sumari, J.)**

**dated the 5<sup>th</sup> day of November, 2018**

**in**

**Land Case No. 09 of 2017**

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**RULING OF THE COURT**

23<sup>rd</sup> & 26<sup>th</sup> September, 2022

**KITUSI, J.A.:**

Mr. Gwakisa Sambo, learned advocate representing Kibo Corridor Limited the applicant, has moved the Court to grant the applicant leave to amend the Memorandum of Appeal in Civil Appeal No. 307 of 2019 so as to add two grounds, in terms of rules 4(1) (2) and 111 of the Court of Appeal Rule, 2009 (the Rules). The notice of motion moving the Court is supported by an affidavit taken by Mr. Sambo himself highlighting the fact that the intended

new grounds raise issue with the jurisdiction of the High Court from which Civil Appeal No. 307 of 2019 originates.

Mr. Alex Mgongolwa, learned advocate who appeared for the respondent along with Mr. Moses Kimaro, also learned advocate resisted the application. The respondent filed an affidavit in reply taken by one Mehul Narendra Sampat, the Principal Officer. In that affidavit in reply, it is mainly stated that the High Court had the requisite jurisdiction over the matter and it was properly constituted. Further that no objection was ever raised by the applicant.

Apart from echoing the contents of the affidavit in reply, Mr. Mgongolwa raised concern with the protracted proceedings which he feared may be delayed all the more if the applicant will have his way as prayed by her. At our prompting, Mr. Mgongolwa conceded that jurisdiction of the court may be raised at any time and further that an application of this nature could have been made informally.

We have considered the notice of motion, affidavits and counsel's brief addresses and we wish to begin by observing that given the tone of the contemporary Rules of the Court, particularly rule 113(1), an application to argue additional grounds of appeal

rarely provokes resistance. More so, in our view, when the grounds, without deciding, raise issue with the jurisdiction of the trial court.

In the circumstances, we grant the application and order the applicant to amend the memorandum of appeal in Civil Appeal No. 307 of 2019 by adding the two grounds to wit:-

- " 9. *That the trial court erred in law and in fact in proceeding hearing Land Case No. 09 of 2017 in contravention of the mandatory requirement of Rule 5F of the High Court Registries (Amendment) Rules of 2001, GN Number 63 of 2001 making the Court to be without jurisdiction and the whole proceedings, judgment and decree to be null and void ab initio.*
10. *That the trial court erred in law and in fact in proceeding with the hearing of Land Case No. 09 of 2017 while it was not well constituted and without the aid of assessors."*

We order the amended Memorandum of Appeal to be lodged and served within 14 days of the delivery of this ruling. We also order that at the time of filing the amended Memorandum of Appeal, the appellant should file supplementary written submissions to address the new grounds and immediately serve a copy thereof on the respondent. Likewise, the respondent should,

within 14 days of such service, file a reply to the supplementary written submissions.

Costs to abide the outcome of the appeal.

Before we take leave, we recommend to the Honourable Chief Justice that he be pleased to constitute a full bench of the Court to deliberate on some pertinent issues in Civil Appeal No. 307 of 2019.

**DATED** at **MOSHI** this 23<sup>rd</sup> day of September, 2022.

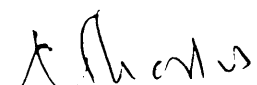
I. H. JUMA  
**CHIEF JUSTICE**

G. A. M. NDIKA  
**JUSTICE OF APPEAL**

I. P. KITUSI  
**JUSTICE OF APPEAL**

This Ruling delivered this 26<sup>th</sup> day of September, 2022 in the presence of Mr. Patrick Paul holding brief for Mr. Gwakisa Sambo, learned counsel for the Applicant and Mr. Mehul Sempat, Manager of the Respondent, is hereby certified as a true copy of the original.



  
C. M. MAGESA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**