

IN THE COURT OF APPEAL OF TANZANIA

AT BUKOBA

(CORAM: JUMA, C.J., MWAMBEGELE, J.A., And KEREFU, J.A.)

CIVIL APPLICATION NO. 352/04 OF 2021

TWAHA MICHAEL GUJWILE APPLICANT

VERSUS

KAGERA FARMERS COOPERATIVE BANK RESPONDENT

(from the Ruling of the High Court of Tanzania, at Bukoba)

(Kairo, J.)

dated the 29th day of May, 2020

in

Miscellaneous Land Application No. 12 of 2017

.....

RULING OF THE COURT

23rd & 26th August, 2021

MWAMBEGELE, J.A.:

The High Court of Tanzania (Kairo, J. – as she then was) sitting at Bukoba, refused the applicant; Twaha Michael Gujwile, leave to appeal to the Court seeking to assail the decision of the High Court (Bongole, J.) which dismissed with costs his appeal from the decision of the District Land and Housing Tribunal. That decision (of the High Court) was handed down on 07.02.2017. The applicant was aggrieved with that decision on appeal. He lodged a notice of appeal two days after the judgment was

pronounced; that is, on 09.09.2017. As the appeal to the Court in that matter lied with leave of the High Court in terms of the then section 47 (1), now section 47 (2), of the Land Disputes Courts Act, Cap. 216 of the Revised Edition, 2002 (now 2019) (the Land Disputes Courts Act), the applicant thus filed the requisite application to seek that leave. That application was dismissed on 29.05.2020.

On what the applicant purports to be a second bite of the cherry, he lodged this application on 10.06.2020 under section 47 (2) and (4) of the Land Disputes Courts Act read together with section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 of the Revised Edition, 2019 and rules 2, 45 (b) and 48 (1) of the Tanzania Court of Appeal Rules, 2009, as amended. The application is by a notice of motion supported by an affidavit deposed by Twaha Michael Gujwile, the applicant. It is resisted by an affidavit in reply deposed by Gerald Felix Njoka, a State Attorney in the Office of the Solicitor General.

When the application was placed for hearing before us on 23.08.2021, the applicant appeared in person, unrepresented. Mr. Solomon Lwenge, learned Senior State Attorney and Mr. Gerald Felix

Njoka, learned State Attorney, joined forces to represent the respondent Bank.

The applicant had earlier on filed written submissions in support of the appeal which he prayed to form part of his oral arguments. There were no reply written submissions from the respondent Bank but we allowed the learned State Attorney for the respondent to resist the application in terms of rule 106 (10) (b) of the Rules.

In his submissions, despite the fact that the applicant referred to the application as one on a second bite, both in his written submissions and oral address before us, he was appealing against the decision of the High Court which refused him leave to appeal to the Court. The applicant was insistent that, in a second bite, like the present, the Court has jurisdiction to set aside the decision of the High Court which refused him leave to appeal to us. Actually, in the Notice of Motion, the applicant implored the Court to:

"... be pleased to reverse or set aside the ruling and order given by the High Court before Hon. L. G. Kairo, Judge dated 29th May, 2020 by allowing my

application for leave to appeal for the interest of justice."

On the strength of the written submissions and oral address during the hearing of the application, the applicant prayed that his application should be allowed with costs.

The course of action taken by the applicant met a strenuous resistance from the respondent Bank. It was the view of Mr. Njoka, who resisted the application for the respondent, that the applicant has burnt a lot of fuel challenging the decision of the High Court which declined him leave to appeal to the Court instead of giving reasons why he thought leave should be given so that he can assail the decision of the High Court (Bongole, J.) which rejected his appeal. In so doing, the learned State Attorney submitted, the applicant argued the second bite application as if it was an appeal and, consequently, failing to bring to the fore any reason why the Court should grant him leave to appeal to the Court.

Given the above, the learned State Attorney urged us to dismiss the application with costs for failure to give reasons why the application should be granted.

In a short rejoinder, the applicant stuck to his guns submitting that this was a second bite application in which the Court has jurisdiction to reverse the decision of the High Court which declined him leave to appeal to the Court. To buttress this point, he referred and supplied us with our unreported decision in **Mustafa Athuman Nyoni v. Issa Issa Athuman Nyoni**, Civil Application No. 322/10 of 2020 and **Jireys Nestory Mutalemwa v. Ngorongoro Conservation Area Authority**, Civil Application No. 154 of 2016 (also unreported) in which we granted such leave on a second bite.

The applicant thus reiterated his prayer to allow his application with costs.

We have subjected the rival arguments by the parties to this application to proper considerations they deserve. Indeed, the law as it stands now, the High Court sitting as a land court and the Court of Appeal have concurrent jurisdiction in applications for leave to appeal to the Court under section 47 (2) of the Land Disputes Courts Act. This is by virtue of the amendment to section 47 of the Land Disputes Courts Act brought by the Written Laws (Miscellaneous Amendments) (No.3) Act, 2018 - Act No. 8 of 2018. To appreciate

the decision we are going to make herein, we take the liberty to reproduce the provisions of section 47 of the Land Disputes Courts Act before and after the amendments. Before the amendments section 47 read:

*"(1) 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.*

(2) N/A

(3) N/A."

[Emphasis ours].

After the amendments the section now reads:

"(1) A person who is 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.

*(2) A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may, **with leave of the High***

Court or Court of Appeal, appeal to the Court of Appeal.

(3) N/A

(4) N/A.”

[Emphasis ours].

It is apparent from the above reproduced section 47 of the Land Disputes Courts Act how it read before the amendments and how it reads now; after the amendments. That is, before the amendments the section vested in the High Court sitting as a land court exclusive jurisdiction to grant leave to appeal to this Court over any decision of that court rendered in its exercise of original, appellate or revisional jurisdiction. After the amendments the positions were severed between the decisions of that court on original jurisdiction which no longer needed leave of the High Court sitting as a land court and the decisions on appellate or revisional jurisdiction which needed leave of either the High Court sitting as a land court or the Court of Appeal. That is to say, the law as it is now in the statute book, the High Court sitting as a land court and the Court of Appeal, have concurrent jurisdiction to grant such leave on decisions dealt with it in its capacity as an appellate court or on its revisional jurisdiction. Thus under the old position, an applicant who was refused leave to appeal

to this Court over any decision of the High Court sitting as a land court, rendered in its exercise of its original, appellate or revisional jurisdiction had no option of a second bite but an appeal – see: **Tumsifu Anasi Maresi v. Luhende Jumanne Selemani And Another**, Civil Appeal No. 184/11 of 2017, **Yusufu Juma Risasi v. Anderson Julius Bacha**, Civil Application No. 176/11/2017, **Eladius Tesha v. Justine Sekumbo**, Civil Application No. 170 of 2014 and **Idd Miraji Mrisho (Administrator of the Estate of Mwanahamis Ramadhani Abdallah, Deceased) & anor v. Godfrey Bagenda**, Civil Application No. 17 of 2015 (all unreported decisions of the Court), to mention but a few.

To recapitulate, after the amendments, the position has drastically changed; a paradigm shift from the old position is in place where now the High Court sitting as a land court and the Court of Appeal, have concurrent jurisdiction to grant leave in decisions of the High Court sitting as a land court rendered in its exercise of its revisional or appellate jurisdiction – see: **Hamisi Mdida Said Mbogo v. The Registered Trustees of Islamic Foundation**, Civil Appeal No. 232 of 2018 and **Mustafa Athumani Nyoni** (supra).

Flowing from the above, in the case at hand, the applicant was therefore quite in the right track when he came to the Court on a second bite in terms of the current section 47 (2) of the Land Disputes Act. However, as rightly pointed out by the learned State Attorney, even though the applicant refers to the application as a second bite which should therefore have sought leave of the Court to appeal against the decision of the High Court (Bongole, J.) which dismissed his appeal from the District Land and Housing Tribunal, he in every material particulars challenges the decision of the High Court (Kairo, J. as she then was) which refused him leave to appeal to the Court. The notice of motion, affidavit and written submissions in support of the application as well as the oral address before us attack the decision which refused him leave to appeal to the Court. In the course of doing so, the applicant has not brought any iota of reason to substantiate the second bite. The applicant has therefore miserably failed to bring before us material upon which we can exercise our jurisdiction to grant the order sought. This court, on a second bite, has no jurisdiction to evaluate and reverse the decision of the High Court which refused the applicant leave to appeal to the Court. We cannot sit on an appeal of that decision. To be precise, a second bite is not an appeal.

In view of the discussion above, the applicant has failed to prove his application for leave, as a second bite, to appeal to the Court. In the circumstances, we are constrained to, as we hereby do, dismiss this application. We do so with costs to the respondent.

DATED at BUKOBA this 25th day of August, 2021.

I. H. JUMA
CHIEF JUSTICE

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

R. J. KEREFU
JUSTICE OF APPEAL

The Ruling delivered this 26th day of August, 2021 in the presence of Mr. Twaha Michael Gujwile the Applicant in person and Mr. Gerald Njoka, learned counsel for the Respondent is hereby certified as a true copy of the original.

