

**IN THE HIGH COURT OF TANZANIA  
AT ARUSHA**

**MISC. CIVIL APPLICATION NO.219 OF 2014**

(Originating from c/f civil Revision No.7 of 2005 and original Arusha Rm's  
court Misc. civil Appl No.17 of 2005)

**ENOCK PHILIPO**

**NEHEMIA PHILIPO**

**SAFARI GARA**

**CHRISTOPHER DUWANGHE**

}

..... **APPLICANTS**

*VERSUS*

**NIPAEEL GARA ..... RESPONDENT**

**RULING**

**MAGHIMBI, J.**

This application for leave to appeal to the court of appeal is brought under the provisions of Section 5(1) (c) of the Appellate Jurisdiction Act No. 15 of 1979, Cap. 141 R.E 2002 to be read together with Rule 45(a) of the Court of appeal Rules, 2009 and Section 47(1) of the Land Disputes Court Act, Cap 216 R.E 2002. The leave sought is to appeal against the Ruling of this Court in Civil Revision No. 7 of 2005 dated 15/09/2014 originating from the Resident Magistrate's Misc. Civil Application No. 17 of 2005. The application was supported by an affidavit of the applicant counsel Mr. Jerry Siay dated 25/09/2014.

The application was heard by way of written submissions. As per the applicant's submissions, the gist of the application is that in Misc Civil Application No. 17/2005 at the Arusha Resident Magistrate's Court, the

applicants herein moved the resident magistrate; under the provisions of Section 30(2) (b) of the Magistrate Court's Act, Cap 11 RE 2002; to call for and inspect the record of Karatu Primary court in Probate and Administration Cause No. 28/2002. The Resident Magistrate inspected the records and prepared notes and decided in favour of the applicants herein. Vide Civil Revision No. 7/2005 the High Court decided in favour of the respondent herein for reason that the Resident Magistrate should have summoned the parties during the time he was conducting the inspection of the Primary Court records, hence the respondents were condemned unheard.

The applicants herein argued that the High Court erred in faulting the sound inspection notes on the pretext that parties were not called to attend and be heard. That there is no law that requires parties to be called to appear when the matter is called for inspection. The applicants therefore seek leave of this court to appeal and let the court of appeal decide as to whether or not the High Court Judge was right when he held that parties should have called to attend at the Inspection of the Primary court Record and whether there is any law to that effect. The applicants prayed that their application be allowed with costs.

In reply, the respondent submitted that the applicants' argument is misconceived and misleading as the law is settled for leave to appeal to the Court of Appeal to be granted there must be a prima facie ground meriting the appeal which is the existence of a legal issue requiring determination by the Court of Appeal. The respondent argued that it was necessary for the respondent at the Resident Magistrate Court to file a counter affidavit

and annex documents if any to show her interest over the disputed land before the Resident Magistrate made a decision. Further that in the Resident Magistrate's Court principles of natural justice required hearing of both parties before making the decision. She submitted that the argument raised by the applicants does not merit appeal to the Court of Appeal. To support her argument, the appellant cited the case of **Wambele Mtumwa Chamte Vs. Asha Juma, Civil Application No. 45/1999** and again the case of **Gaudensia Mzungu Vs. The IDM Mzumbe, Civil Application No. 94/1999** where in both cases emphasized that leave should be granted where there are prima facie grounds meriting an appeal to the court of appeal.

On the argument raised by the applicant that Section 30(2)(b) of Cap 11 R.E 2002 does not require the court to call parties, the respondent counter argued by citing the case of the **Judge-in-Charge, High Court Arusha & The Attorney General Vs. Nin Munuo Ng'uni Civil Appeal No. 45 of 1998** where the Court of Appeal held that:

*"Does that paragraph dispense with the principle of natural justice of audi alteram partem, that is, hear the other side? We think not. Admittedly, the action of a High Court judge under that paragraph is purely interim and awaits the decision of the High Court, it nevertheless affects the human rights of an individual. We agree with the learned trial judges that the current trend and tempo of human rights demands that there should be a right to be heard even for such interim decision."*

The respondent hence argued that in the light of the cited decision, even where the statute does not set of fix procedures, the relevant authority must create and carry out necessary procedures and if the set and fixed procedures are not comprehensive, the authority must supplement it. That is not proper for the applicants to rely on the argument that Section 30(2) (b) of Capp 11 does not provide for hearing of parties before proceedings are reversed. The respondent submitted that it is needless for the applicant to go to the court of appeal for a matter which is settled and hence the applicant has not established prima facie grounds meriting appeal to the Court of Appeal. In conclusion, the respondent prayed that this application be dismissed with costs.

Having considered the submission from the parties and the records of the application, the main reason for leave application is to have the Court of Appeal determine the issue as to whether Section 30(2) (b) of the Magistrate Court's Act, Cap 11 RE 2002 confers the parties a right to appear in inspectional or revisional proceedings. Further that whether non-calling of the parties in such proceedings infringes the rules of natural justice when the orders to be made thereto are to the detriment of the interest of any of the parties. In my opinion, this is an issue that need to be settled by the apex court of the country. It is for this reason that I grant this application. The applicant is hereby granted leave to appeal to the court of appeal against the High Court decision in Civil Revision No. 7/2005.

***Application Allowed.***

Dated at Arusha this 31<sup>st</sup> day of July, 2015



**SGD  
S. M. MAGHIMBI  
JUDGE**

I hereby certify this to be a true copy of the original.

  
**Deputy Registrar  
High Court  
Arusha**

15/10/15