

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT IRINGA

MISCELLANEOUS CASE LAND APPLICATION NO. 27 OF 2014

KHALID NDEDE APPLICANT

VERSUS

ASHA DANIEL SANGA RESPONDENT

20/10/2015 & 24/11/2015

RULING

Kihwelo J.

The applicant herein has filed an application before this Court seeking to move the honourable Court under Section 47(1) of the Land Disputes Courts Act, Cap 216 RE 2002, Section 5(1) (c) of the Appellate Jurisdiction Act, Cap 141 RE 2002 and Rule 45(a) of the Court of Appeal Rules, 2009 for the following orders inter alia:-

- (a) That this honourable Court be pleased to grant the certificate which certify that there is a point of law involved in the application.*

The application was supported by the affidavit sworn in by the applicant himself and from the affidavital evidence the applicant seems to be relying on what is stated at paragraph 4 which reads;

“4. That, there is a point of law which needs to be determined by the court of appeal, that the Ward Tribunal was not properly constituted and he was not given chance to call his witnesses therefore the leave of this honourable court is the most needed.”

The respondent filed a counter affidavit disputing the application as being baseless and without any merit.

When the matter came for hearing of the appeal both the applicant and the respondent being lay person and unrepresented did not have much useful to submit but merely requested that their respective affidavits should be adopted as part of their submissions.

I have painstakingly scrutinized the records of the Ward Tribunal, this Court as well as the instant application and I am faced with one issue which cries for my determination and that is none other than whether or not the application is meritorious.

The provision of Section 47(1) of the Land Disputes Courts Act is very categorical that whoever is aggrieved by the decision of the High Court in the exercise of its original, revisional or appellate jurisdiction may with leave from the High Court appeal to the Court of Appeal.

In the instant case the applicant was aggrieved by the decision of this Court in Miscellaneous Land Application No. 25 of 2010 by Hon. Mkuye J in which the High Court dismissed the application for extension of time to lodge an appeal to this Court from the decision of the District Land and Housing Tribunal. The application was dismissed on account that there was no sufficient reasons. The above being the circumstances the applicant is now intending to appeal against the ruling of this Court Mkuye J. and not the judgment of the District Land and Housing Tribunal or the Ward Tribunal.

However, it is surprising to note that the supporting affidavit in particular paragraph 4 quoted above seems to be challenging the decision of the Ward Tribunal in that it was not properly constituted and that he was not given the chance to call witnesses but this is not the impugned decision of Mkuye J. but rather it is the decision of the Ward Tribunal. It is imperative to stress that Hon. Mkuye J. did not at all discuss the proceedings of the Ward Tribunal or the District Land and Housing Tribunal hence those decisions remains as they are.

It goes without saying that facts as stated in the affidavit do not support the sought prayers since the same are not in line with each other but rather contradictory. The court had an opportunity to discuss this in more or less similar terms in the case of **Sao Hill Industries Limited V Mbuli Abrose**, Revision No. 12 of 2012, High

Court of Tanzania, Labour Division at Iringa (unreported) the court held that;

“Due to the fact that this application is supported by an affidavit with mixed grounds those in respect of ruling on condonation and those regarding the award, it can not be said that the application is supported by an affidavit, the same is left with no legs to stand on, consequently this Court have (sic) been left with no application to determine”.

In my respectful opinion since the affidavit in support of the application do not raise grounds which support the application it has no legs to stand as such the same can not be determined but rather it stands to be struck out. However, the applicant can still access the doors of justice subject to the laws of limitation. The applicant is condemned to costs.

Ordered accordingly.

