

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF ARUSHA  
AT ARUSHA**

**MISC. CIVIL APPLICATION NO. 218 OF 2016**

*(Originating from H/C Civil Appeal No. 10/2015, Original District Court  
of Arusha Probate & Administration No. 3/2014)*

**CECYLIA JOSEPH.....APPLICANT**

**VERSUS**

**RITHA DOMINIC.....RESPONDENT**

**RULING**

**S.M. MAGHIMBI, J**

The applicant named above filed an application before this court made under the provision of section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 R.E 2002 applying for the following orders;

- a) That, this Honourable Court be pleased to grant the Applicant herein leave to appeal to the Court of Appeal of Tanzania against the whole decision of the High Court of United Republic of Tanzania at Arusha in Civil Appeal No. 10 of 2015.
- b) Costs of this application be provided for.

This application is supported by the affidavit of the applicant CECYLIA JOSEPH. In this matter, the applicant was represented by Maeda learned counsel while the respondent appeared in person and

unrepresented. The hearing of this application was disposed by way of written submission whereby the applicant was ordered to file his submission on 28/06/2017, the respondent to file reply on 12/07/2017 and rejoinder if any to be filed on 19/07/2017. Both parties filed their submission accordingly.

Arguing the application, the applicant's counsel submitted that the applicant prays for leave to appeal to the Court of Appeal of Tanzania against the decision of the High Court of United Republic of Tanzania. He said that this application is brought under the provisions of section 5 (1) (c) of the Appellate Jurisdiction Act, 1979 [Cap 141 R.E. 2002]. He prayed to adopt the affidavit of the applicant Cecylia Joseph (the administratrix of the estate of the late ELIYA MOSHA ONNA) to form part and parcel of this submission. It is his submission that, the applicant in this application was the administratrix of the estate of her late husband, Eliya Mosha Onna, who passes away on 15<sup>th</sup> May, 2013 at KCMC Hospital. On 13<sup>th</sup> June, 2014. The Applicant was appointed by the District Court of Arusha/ Arumeru as the administratrix of her late husband estate. In the letter issued to the applicant as the administratrix, she was required, among other things, to make full and true inventory of the properties and credits of the deceased and exhibit the same in Court within six months from the date of the grant. In case, the time scheduled appears to be insufficient then the court may extend. He further stated that, on 1<sup>st</sup> July, 2014 just 17 days from the date when the Applicant was appointed as administratrix, she filed before the trial

Court inventory. On 17<sup>th</sup> November, 2014 the Applicant wrote a letter to the Resident Magistrate In-charge requesting Court's assistance as she failed to discharged her duties due to the act of trespass committed by the Respondent into the deceased estate. The complaint lodged by the applicant was never heard instead the court entertained a complaint raised by the respondent. He further stated that, while the case was pending for ruling, the Court instead of deliberating on the complaint raised by the parties, it decided, *suo motto*, to revoke the letters of administration from the applicant for failure to discharge her duties without affording her the right to be heard on the matter. Thus, he prayed for leave of this Court to enable the applicant to be heard by the Court of Appeal of Tanzania on the following pertinent issues;

1. Whether the Appellate Court was legally right to uphold the decision of the trial magistrate that the Appellate Court failed to execute her duties as the administratrix while her period of six months to perform her duties had not lapsed.
2. Whether, the Appellate Court was correct to uphold the decision of trial court revoking Appellant's letters of administration of the estate of her late husband without affording her with the right to be heard contrary to the principles of natural justice.
3. Whether, the trial court was correct to give Ruling on a different issue from the ones brought before it by the parties.

He further stated that, the raised points of law and fact as stated above need to be addressed and deliberated by the Court of Appeal; hence prayed this court to grant the applicant with the leave to appeal to the Court of Appeal of Tanzania.

In reply, the respondent prayed to adopt her counter affidavit to be part and parcel of his submission. She further submitted that it is not every one who desires to appeal his/her leave has to be granted. He cited the case of **Alivuai Ali vs Suwedi Mzee Suwedi [2004]** TLR 110 where Court of Appeal held that;

*"The purpose of requirement of certificate for the class of Appeals originating in Primary Courts was to ensure that only deserving cases reach the Court of Appeal; it is a screening process to leave for the attention of the Court only matters of legal significance and public importance, ....."*

She stated that, in the present case there is no legal and public importance. She further contended that, the applicant was appointed on 4/6/2014 and her appointment was revoked on 24/2/2015 as she had exhibited the inventory which revealed one asset (house left) by the deceased and the inventory was filed within seventeen (17 days) but she failed to file an account of estate. She added that, also the appointment of the applicant is questionable because it was not supported by the clan meeting that is why she failed to perform her duties when she went to court on 17<sup>th</sup> November, 2014 by letter seeking an assistance. She thus stated that, the main aim of the applicant is to re-instate her letter of appointment which was revoked

by the trial court after the complaint was filed by the respondent due to her act of threatening the children of the deceased to evict them from the house which they used to live therein for their whole span with the respondent and the deceased. Hence, the respondent prayed this court to dismiss this application with costs.

I have considered the submissions of both parties and gone through the applicant's affidavit and the submission in support of the application, together with the respondents' counter affidavit and reply submission opposing the application. It is a settled position of the law that, in order for this court to grant an application for leave to appeal to the Court of Appeal, the applicant must demonstrate that there is prima facie merits on grounds of appeal intended to be challenged to the Court of Appeal. It was stated in the case of **Sango Bay Estates Ltd and others vs. Dresdner Bank A. G** [1971] 1 EA 17 that;

*"leave to appeal from an order in civil proceedings will normally be granted where prima facie it appears that there are grounds of appeal which merit serious judicial consideration....."*

It was also stated in the case of **Gaudensia Mzungu vs. The I.D.M Mzumbe**, Civil Application no. 94 of 1999, CAT (unreported) that;

*".....again, leave is not granted because there is an arguable appeal. There is always an arguable appeal. What is crucially important is whether there is prima facie grounds meriting an appeal to this court."*

The applicant's counsel in his submission stated that the applicant intend to be heard by the Court of Appeal on the following pertinent issues, that;

1. Whether the Appellate Court was legally right to uphold the decision of the trial magistrate that the Appellate failed to execute her duties as the administratrix while her period of six months to perform her duties had not lapsed.
2. Whether, the Appellate Court was correct to uphold the decision of trial court revoking Appellant's letters of administration of the estate of her late husband without affording her with the right to be heard contrary to the principles of natural justice.
3. Whether, the trial court was correct to give Ruling on a different issue from the ones brought before it by the parties

As I have gone through the points which has been stated above, in particular point No. 2 which entails denial of a right to be heard; I therefore find that there is prima facie merits on the intended appeal and I hereby grant leave to the applicant to appeal to the Court of Appeal.

Dated at Arusha this 31<sup>st</sup> day of January, 2018

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**S.M MAGHIMBI**  
**JUDGE**