

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 496 OF 2018

CHAMGORE WILDLIFE SAFARI CAMP..... APPLICANT

VERSUS

THE TRUSTEES OF THE TANZANIA

NATIONAL PARKS.....RESPONDENT

RULING

Date of last order: 03/07/2019

Date of ruling:01/10/2019

MLYAMBINA, J.

The instant application has been preferred under ***Section 5 (1) (c) of the Appellate Jurisdiction Act, Cap 141 (R.E 2002).***

The Applicant sought for the order that; *this Hon. Court grant leave to the Applicant to appeal to the Court of Appeal against the decision of High Court of Tanzania (Dar es Salaam Registry) dated 31st July, 2018 in Civil Appeal No. 31 of 2017.*

The application has been supported with an affidavit of Audax Kahendaguza Vedasto an Advocate representing the Applicant. On 24th April, 2019 by consent of the parties it was ordered the matter be disposed by way of written submissions. Both parties complied with the schedule.

Upon going through their written submissions, I noted the Respondent raised a useless preliminary objection on time limit. I say so because it is not in dispute the impugned decision was pronounced on 31st July, 2018. This application was filed on 29th August, 2018 which is 29 days from the date of decision. The law governing limit of applying for leave is **Rule 45 (a) of the Tanzania Court of Appeal Rules 2009 as amended by G.N No. 362 of 2017** which reads;

"In civil matters:

Notwithstanding the provisions of Rule 46 (1) where an appeal lies with the leave of the High Court, an application for leave may be made informally when the decision against which it is desired to appeal is given, or by chamber summons according to the practice of the high court, within thirty days of the decision or"

On merits, it was not disputed that the principles governing matters to consider in granting leave were established in the case of **Harban Haji Mosi and Another v. Omary Hilal Seif and Another** (2001) TLR 409 in which Lugakingira J.A (as he then was observed:

"Leave is grantable where the proposed appeal stands reasonable chances of success or where but not necessarily, the proceedings as a whole reveal such disturbing features as to require the guidance of the court of appeal. The purpose of the provision is therefore to spare the court the specter of unminting matters and to enable it to give adequate attention to cases of true public importance"

On the first point, the Applicant asserted that this court erred in law to hold to the effect that the court of a Resident Magistrate of Morogoro at Morogoro had both subject matter and pecuniary jurisdiction to hear and determine Civil Case No. 5 of 2015 whose decision gave rise to Civil Appeal No. 31 of 2017 in the High Court. I have had time to go through the entire submissions, I noted the Respondent was claiming for arrears of accommodation fee in respect of a lease agreement of tourist cottages as correctly replied by the Respondent and as correctly found by this Court on the impugned decision, the magistrates courts have jurisdiction on remedies and relief (s) for claims falling under ***Sub part 4 of part IX of the Land Act No. 4 of 1999***. This was the position of this Court in the case of **Charles Rick Mulaki v. William Jackson Magero Civil Appeal No. 69 of 2017** at Mwanza (unreported).

As such, I find there is no legal issue to be determined by the Court of Appeal of Tanzania.

The other point raised by the Applicant is on the existence of the Trustees of the Tanzania National Park. I find this is a weak point because **Section 8 (1) of the National Parks Act, Cap 282 (R.E. 2002)** establishes the same. It is a statutory creature and the president has already appointed them. As such, the point is not a pure legal point worth to be determined by the Court of Appeal.

Regarding the raised issue of administration of the lease agreement whose stamp duty was not paid, I find the same point to be weak. As correctly replied by the Respondent, **Section 47 (1) (e) of the Stamp Duty Act, Cap 189** allows Courts of law to admit the mentioned agreement even if the stamp duty was not paid save that such agreement shall be executed by or on behalf of the government. In this matter the Respondent executed the said agreement on behalf of the government. So, there is no point at all to call attention of the Court of Appeal.

In the premises of the above, the application is dismissed with costs for lack of merits. It is so ordered.



Y. J. MLYAMBINA
JUDGE
01/10/2019

Ruling dated and delivered this 01st day of October, 2019 in the presence of Dritrick Mwesigwa for the Applicant and in the absence of the Respondent.



Y. J. MLYAMBINA
JUDGE
01/10/2019