

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(SONGEA DISTRICT REGISTRY)**

AT SONGEA

MISCELLANEOUS LAND CASE APPLICATION

NO.39 OF 2019

*(Arising from the Ruling and Order of the High Court of Tanzania at Songea
in respect of Misc. Land Case Application No. 30 of 2019)*

NATHANIEL LUNGU.....APPLICANT

VERSUS

ISDORY MOYO (as a legal representative of

LAURENT SINDA MOYO and

MAKARIUS SINDA MOYO) RESPONDENT

Date of last order: 02/04/2020

Date of ruling: 19/05/2020

RULING

I. ARUFANI, J.

The applicant, Nathaniel Lungu filed in this court the application at hand seeking for leave of the court to appeal to the Court of Appeal of Tanzania against the order of this court (Honorable Madam Justice S. C. Moshi.) dated 8th day of October, 2019 made in Civil Land Case Application No. 30 of 2019. The application is made under section 5 (1) (c) of the Appellate Jurisdiction Act, 1979; Rules 45 and 49, of the Tanzania Court of

Appeal Rules, 2009; section 47 (1) of the Land Disputes Courts Act, 2002 (Act No. 2 of 2002) Cap 216 R. E. 2002 and any other enabling provision of the law) and is supported by the affidavit sworn by the applicant, Nathaniel Lungu.

The brief facts of the application are to the effect that, the respondent acting under capacity of being a legal representative of the late Laurent Sinda Moyo and Makarius Sinda Moyo filed a suit against the applicant before the District Land and Housing Tribunal for Ruvuma at Songea (henceforth; the tribunal). The respondent claimed in the said suit which was registered as Land Application No. 87 of 2017 that, the applicant had trespass the land of the deceased located at Mwanamonga Street – Myegeya area within the Municipality of Songea.

After full trial of the application the tribunal declared the applicant is a trespasser to the land and ordered him to vacate from the land in dispute. The applicant was aggrieved by the decision of the tribunal and filed an application in this court seeking for extension of time within which he could have filed his appeal in this court out of time. The application which was registered as Miscellaneous Land Application No. 30 of 2019 failed to succeed after being found the applicant had failed to show

sufficient reason for his delay. After the application being dismissed with cost the applicant lodged the instant application in this court seeking for leave to appeal to the Court of Appeal of Tanzania against the stated decision of this court.

When the application came for hearing on 18th February, 2020 the applicant appeared in court in person and also represented by Mr. Nestory Nyoni, learned advocate who held brief of Mr. Eliseus Ndunguru, learned advocate for the applicant. On the other side the respondent appeared in court in person without any legal representation. Mr. Nestory Nyoni prayed the court to allow the application to be argued by way of written submission as the respondent had no legal representative. As the respondent had no objection to the prayer the court allowed the parties to argue the application by way of written submission. Therefore the application was argued by way of written submission.

The counsel for the applicant stated in his written submission that, leave to appeal to the Court of Appeal is only granted upon an applicant demonstrating that the intended appeal has issues of general importance or a novel point of law or there is a prima facie or arguable appeal which requires an intervention of the Court of Appeal of Tanzania. To support

what he stated in his submission he referred the court to the case of **British Broadcasting Corporation V. Eric Sikujua Ngimaryo**, Civil Application No. 138 of 2004, CAT at DSM (unreported) and stated it was observed in the cited case that, leave to appeal is not automatic and it is within the discretion of the court to grant or refuse to grant it.

He argued in relation to the application at hand that, after delivery of the decision of the tribunal the applicant applied for copies of judgment and decree by lodging a letter before the tribunal. He argued that, despite the fact that the letter was not endorsed by the Registry Officer but it was filed in the case file and it is still in the case file. He submitted that, since it is a requirement of the law that an appeal originating from the decision of the tribunal in its original jurisdiction must be accompanied with a copy of judgment and decree appealed from the applicant could have not appealed until when he was supplied with the mentioned documents. He stated that, despite the fact that the applicant applied for the mentioned copies of documents on 12th April, 2019 but the same were supplied to him on 3rd July, 2019 which was out of time prescribed by the law for lodging appeal to this court.

He argued that, the stated situation prompted the applicant to apply for extension of time to appeal out of time against the decision of the tribunal but the court declined to grant extension of time sought. He stated the grounds relied upon by the court to decline to grant the application are to the effect that, the letter used to apply for the copies of judgment and decree was not endorsed by the Registry Officer of the tribunal and therefore there was no proof that the applicant applied for the sought copies timely. He submitted that, the applicant applied for the sought copies timely as he applied for the same on 12th April, 2019. He argued that, his perusal in the Land Disputes Courts Act, Cap 216 of 2002 and its Rules together with the Civil Procedure Code, Cap 33 R.E 2002 do not show there is any provision requiring a letter for applying for copies of the judgment and decree to be endorsed.

He argued that, although the Court of Appeal stated in the case of **Lekashingo Building and Construction Co. Ltd V. Festo Lukelo t/a Kamwene Investment**, Civil Appeal No. 192 of 2016 CAT at Iringa (unreported) that the documents filed in the Court must be endorsed by Court Officer as per Rule 18 of the Court of Appeal Rules, 2009 but the Honorable Judge was wrong to rely on that decision as it was construing

the Court of Appeal Rules which do not apply in the tribunal. He argued further that, even if it will be taken the letter was required to be endorsed it was not proper for the Honorable judge to blame and punish the applicant as the duty to endorse the said letter lied on the tribunal's Officer and not on the applicant. He submitted that, it is their intention to argue before the Court of Appeal that the Honorable judge misdirected herself to punish the applicant basing on the fault of the tribunal.

He argued that the applicant took all necessary measures including applying for copies of the judgment and decree within a short time from the date of delivery of the judgment and finally lodged the application in this court immediately after being supplied with the sought copies and that depicts the applicant acted diligently. He referred the court to the case of **DT Dobies & Company Ltd V. N. B. Mwakibete**, [1992] TLR 152 to support his submission that, what was done by the applicant cannot easily be ignored; to the contrary it is strengthening her position that she was actively pursuing the appeal. He submitted that, the applicant has managed to establish the application is not frivolous, vexatious or useless and stated there is an arguable appeal which needs to be adjudicated by the Court of appeal.

The counsel for the applicant submitted further that, the grounds the applicant intend to argue before the Court of Appeal are whether it was correct for the Honorable Judge to decline to grant extension of time on the ground of non- endorsement of the document while there is no any law requiring the said endorsement; whether it was proper for the Honorable Judge to punish the applicant for the fault of the court itself and lastly, whether the court was proper to decline to grant extension of time while the date for applying for the copies of judgment and decree endorsed on the judgment supplied to the applicant could have been used to prove the date the judgment and decree were sought from the tribunal. At the end he prayed the application to be granted.

In his reply, the respondent submitted that, it is the requirement of the law that, an applicant who wishes to appeal to the Court of Appeal of Tanzania on matters decided by the High Court of Tanzania on its original jurisdiction must seek leave of the High Court of Tanzania and the leave is granted upon demonstrating that, the intended appeal has issue of general importance or novel points of law or where the grounds shows a prima facie or arguable appeal which requires an intervention of the court of appeal. He added that, as held in the case of **British Broadcasting**

Corporation (supra) it is the discretion of the court to grant or refuse to grant leave to appeal to the court of appeal of Tanzania upon finding there is arguable appeal.

The respondent went on submitting that, it is also the requirement of the law an appeal from the tribunal has to be accompanied with the copies of the judgment and decree of the tribunal appealed from. However, the respondent contended that, from the records of the matter decided by this court which is Misc. Land Case Application No. 30 of 2019, the applicant did not apply for the copies of the judgment and decree on 12th April 2019 as claimed. He argued that, the letter purported to be lodged before the tribunal is typed written but part of the date is hand written and no endorsement showing the date and time the letter were received by the Tribunal as it was held in the case of **Lekashingo Building and Construction Co. Ltd**, (supra), which is very relevant in the matter at hand and authoritative to all subordinate courts.

He stated that, the judgment of the tribunal was delivered on 02nd April, 2019 and contended that, even if it will be taken the applicant correctly applied for the copies of judgment and decree on 12th April 2019 but there is ten days passed and there is no justifiable cause advanced to

show what made him to delay for the stated days. He added that, the court declined to grant the applicant extension of time not only because the letter was not endorsed as argued by the applicant in the last paragraph of her submission but also because there were number of days which were not accounted for. At the end he submitted that, the application lacks important point of law need to be argued before the Court of Appeal of Tanzania.

In rejoinder, the counsel for the applicant reiterated what he argued in his submission in chief that, the case of **Lekashingo Building and Construction Co. Ltd** (supra) was in respect of the Court of Appeal Rules and specifically it was construing Rule 18 of the Court of Appeal Rules. He argued that, since the Court of Appeal Rules do not apply in other courts except in the Court of Appeal of Tanzania itself, it was unfair to apply the same before the courts subordinate to the Court of Appeal of Tanzania. He added that, appeal is a constitutional right of a party in a matter and submitted that, the application at hand has met all standards set down by the law and therefore prayed the court to grant the application.

The court has carefully considered the submission from both sides and find the issue to be determined in this application is whether the

applicant has been able to satisfy the court she deserve to be granted leave to appeal to the Court of Appeal of Tanzania against the decision made by this court in the above mentioned matter. The court has found as rightly submitted by both sides, leave to appeal to the Court of Appeal is not automatic. It is granted where the court is satisfied the purported grounds of appeal raise issues of general importance or where the grounds shows there is an arguable issue of law, facts or mixed facts and law which need to be determined by the Court of Appeal. The above stated position was made clear in the case of **British Broadcasting Corporation** cited in the submission of the applicant and cited in the case of **Hamis Mdida and Another V. The Registered Trustees of Islamic Foundation, CAT at TBR**, Civil Appeal No. 232 of 2018, (unreported) where the Court of Appeal stated that:-

"As a matter of general principle, leave to appeal will be granted where the grounds of appeal raise issues of general importance or a novel point of law or where the grounds show a prima facie case or arguable appeal."

The Court of Appeal stated further in the case of **British Broadcasting Corporation** that, where the grounds of appeal are

frivolous, vexatious or useless or hypothetical, no leave will be granted. While being guided by the above stated principal of the law, the court has gone through the records of the court and find that, the decision of the court which the appellant intends to appeal against to the Court of Appeal of Tanzania if leave to appeal will be granted was dismissed with costs. The court arrived to the stated decision after seeing that, the letter alleged was used to seek for the copies of the judgment and decree from the tribunal was not endorsed by the tribunal's official.

The court has found another reason used by the court to decline to grant the application is that, although the letter was typed written but part of the date was inserted in the latter by hand and the person inserted the said date did not sign on the letter to acknowledge is the one corrected the letter. The stated reasons caused the court to find there was no sufficient evidence to establish the letter was ever filed in the tribunal. As a result the court has found the applicant failed to account for each day of the delay and he failed to give sufficient cause for the delay and dismissed the application with costs.

The position of the law as stated in the case of **Hamis Mdida and Another** (supra) is that, the application for leave does not involve

rehearing of the matter for which leave to appeal is being sought. However, the court is required to be satisfied the applicant has clearly states the factual or legal issues arising from the matter and whether the proposed grounds are prima facie worthy of the consideration of the court of appeal. While being guided by the above position of the law the court has considered the proposed grounds of the intended appeal as deposed at paragraph 8 of the affidavit supporting the application and argued in the submission of the applicant. The court has found the proposed grounds of appeal are points of mixed facts and law and all of them arises from the matter decided by the court which the applicant intend to be argued and determined by the Court of Appeal of Tanzania.

The court has found as stated earlier in this ruling it is very clear that, the point as to whether the letter seeking for copies of judgment and decree filed in the tribunal was supposed to be endorsed by the tribunal's Officer or not is the point arising from the decision the applicant intends to appeal against to the Court of Appeal of Tanzania. The court has also found the point as to whether it was proper for the applicant to be punished for inaction of the tribunal to endorse the letter is also arising from the decision intended to be challenged. Likewise the point as to

whether the court was proper to decline to grant extension of time while the date for applying for the copies of judgment and decree endorsed on the judgment supplied to the applicant could be used to prove the date the judgment and decree were sought from the tribunal is also the point arising from the decision intended to be challenged before the Court of Appeal of Tanzania by the applicant.

The above proposed grounds make the court to find the applicant has managed to satisfy the court he has a prima facie or arguable appeal which deserve to be determined by the Court of Appeal of Tanzania against the decision of the court made in Miscellaneous Land Application No.30 of 2019. In the premises the court has found the applicant's application has merit hence the applicant is granted leave to appeal to the Court of Appeal of Tanzania on the grounds of appeal proposed hereinabove. After considering the circumstance of the application the court has found proper for the interest of justice to make no order as to costs in this matter. It is so ordered.

Dated at Songea this 19th day of May, 2020



I. ARUFANI, J.

JUDGE

19/05/2020

Court:

Ruling delivered today 19th day of May, 2020 in the presence of Mr. Nestory Nyoni, Advocate holding brief of Mr. Eliseus Ndunguru, Advocate for the applicant and in the presence of the respondent in person. Right of Appeal is fully explained.



I. ARUFANI, J.

JUDGE

19/05/2020