IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISCELLANEOUS LAND APPLICATION NO 1 OF 2020

ONDIEK NUNDU_____**APPLICANT**

VERSUS

WILSON KASUKU SARONGE *(As the Administrator of the Estate of the Late Saronge Sahani)*_____**RESPONDENT**

(Arising from the decision and orders of the High Court, Galeba J in land appeal no 31 of 2019 dated 06.12.2019)

RULING

Date of last order; 22.07.2020
Date of Ruling: 07.08.2020

GALEBA J.

This is an application by the applicant for leave to appeal to the Court of Appeal of Tanzania against the decision and the orders of this court, in Land Appeal no. 31 of 2019. This application is made under section **47(2) of the Land Disputes Court Act, [Cap 216 RE 2019]** (**the Land Disputes Court Act**) and it is supported by the affidavit sworn by the applicant himself. The application was resisted by the counter affidavit of the respondent, **WILSON KASUKU SARONGE.**

The underlying dispute between the parties preceding this application is that the respondent filed land application no 66 of 2014 before the District Land and Housing Tribunal (the trial tribunal)

alleging that the applicant had invaded his land located at Koryo Ward in Rorya District. He stated before the tribunal that the suitland belonged to his late father and that his family had been using the said land since 1930 until 2013 when his father passed on. He stated that they had been using the land to cultivate different crops until 2013 when the dispute over the land arose. On the other hand the applicant alleged that the suit land belonged to his late grandfather and members of his family had been using the land for farming. He stated that the land which is 82 acres continued to be used by his family members even after his father passed away in 1980 and they continued to use the land until when the respondent filed the application in the trial tribunal. In that matter the trial tribunal held that the land belonged to the respondent. That decision aggrieved the applicant and he filed land appeal no 31 of 2019 but on 06.12.2019 this court dismissed it. The applicant **ONDIEK NUNDU** was aggrieved by that decision, hence this application for leave to appeal to the Court of Appeal.

When this application was called on for hearing on 22.07.2020 both the applicant and the respondent were represented. The applicant enjoyed the legal representation of Ms. Oliver Sarungi while the respondent was represented by Mr. Thomas Makongo, both learned advocates.

Ms. Sarungi submitted that the applicant is praying for leave to appeal to the Court of Appeal because in law if a person is not

satisfied with a judgment he/she has a right to appeal. Her reason was that both the trial court and the high court erred because the trial tribunal accepted to hear land application 66 of 2014, whereas it had been ordered by the same trial tribunal in land appeal no. 34 of 2014 that the matter should be refiled afresh at Koryo Ward. Because of that she submitted that the tribunal was not supposed to entertain land application no. 66 of 2014. She further submitted that the other error is that both courts erred because they deemed that the Bumera road was the boundary without taking into consideration as to when the road was constructed.

In reply, Mr. Makongo submitted that in land appeal no 34 of 2014 the tribunal did not specify the court or tribunal where the fresh matter would be filed. The argument that the tribunal ruled that the matter was supposed to be refiled at Koryo Ward tribunal is erroneous. He added that the matter could be filed anywhere including in the trial tribunal. Mr. Makongo submitted that the high court did not commit any irregularity in the judgment because it confined itself to the three (3) grounds of appeal which were filed against the decision of the trial tribunal. He submitted that the high court was handling an appeal not a revision in which case the court could look at points not raised during the appeal. He finally submitted that leave must be refused because, for leave to be granted, according to Rule 47(2) of **the Land Disputes Court Act**, there must be reasons.

The matter for determination before this court is whether the applicant for leave to appeal to the Court of Appeal has met all legal requirements to warrant its grant. Ms. Sarungi learned advocate for the applicant submitted that it was an automatic right for anyone aggrieved by the decision of the high court to be granted leave to appeal. However she had no authority to substantiate her submission. It is true when a party is aggrieved by a decision of a court or tribunal at of a particular level or grade has a right to appeal to the court or tribunal at the next level or grade, however there is one caveat and that is, if there are procedures laid down by law to be followed before that right can be exercised the procedure must be followed and the right ceases to be automatic. This was held in the case of **BRITISH BROADCASTING CORPORATION VERSUS ERIC SIKUJUA NG'MARYO CIVIL APPLICATION NO. 138 OF 2004** at page 6-7

> ***" ...leave to appeal is not automatic. It is within the discretion of the court to grant or refuse leave. The discretion must, however be judiciously exercised and on the materials before the court. 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 or arguable appeal."***

There are many decisions on what to consider in order for leave to be granted. In **CIVIL APPEAL NO 232 OF 2018 HAMISI MDIDA VERSUS THE REGISTERED TRUSTEES OF ISLAMIC FOUNDATION,** at page 11 the Court of Appeal held that;

> ***"...while the application for leave must state succinctly the factual or legal issues arising from the matter and demonstrate to the court that the proposed grounds***

of appeal merit an appeal, the court concerned should decide whether the said proposed grounds are prima facie worthy of the consideration of the Court of Appeal. The court will generally look at the judgment or ruling sought to be appealed against to assess whether there are arguable grounds meriting an appeal. Certainly, such a determination will be made at the end of the day after some deliberation but not an adjudication on the merits of the proposed grounds."

This court has gone through the submission of the applicant and it is very unfortunate to state that there are no factual or legal issues submitted by the applicant that are worthy consideration by the Court of Appeal. Although it is not a strictly legal requirement, but this court did not see any proposed ground or grounds of appeal. When pressed hard on disclosure of the error that was committed by the high court to merit attention of the court of appeal, Ms. Sarungi submitted that the high was supposed to note that the trial tribunal was not supposed to handle land application 66 of 2014 because it had previously ordered in land appeal no 34 of 2014 that the matter between the parties should be filed and be heard by Koryo Ward tribunal. Because of the course this court will maintain, it is important to reproduce the grounds which were filed by the applicant in the high court. They were these;

"1. That the Honourable Chairman erred both in law and in fact by not clearly stating how he came to the conclusion that the suit land is 50 acres in the measurement.

2. That the Honourable Chairman erred both in law and in fact by declaring the respondent as the lawful owner of the land in dispute without stating the grounds or reasons upon which the declaration is found.

3. That the judgment of the Tribunal is, under the requirement of the law amount to not judgment (sic)."

When handling the appeal, the issue that the trial tribunal dealt with a matter which it had directed to be decided by Koryo Ward Tribunal was not one of the grounds. When I asked which area of the judgment of the high court had any problem legal or factual, Ms. Sarungi kept submitting that the high court ought to have noted that the trial tribunal was not supposed to entertain land application 66 of 2014 because it had held in land appeal no 34 of 2014, that the matter should have started at Koryo Ward Tribunal and she looked very convinced even after explaining to her that that issue was not one of the grounds of complaint at the high court. Closely looking at the judgment in land appeal no 34 of 2014, one notes that Mr. Makongo was right; at page three of that judgment which is attached to the affidavit as **"JLCA"**, the trial tribunal directed;

> ***"Therefore with all the above noted procedural irregularity I hereby nullify the whole proceedings and judgment of Koryo Ward Tribunal and order the case to start afresh."***

In the above order, ***first*** the tribunal did not specify that the matter must be started afresh at Koryo Ward Tribunal in which case even commencing a fresh matter before any other tribunal with jurisdiction is in order and ***secondly*** this issue was not raised at the high court.

In this application Ms. Sarungi for the applicant failed to point at any error in the judgment of the high court, she maintained reference to the error of the trial tribunal which was neither raised in the tribunal

itself nor was it made an issue or a ground of complaint in the high court.

For the above reasons, leave to appeal to the Court of Appeal is refused. This court makes no orders as to costs.

DATED at MUSOMA this 7th August 2020

Z. N. Galeba
JUDGE
07.08.2020

Court; This ruling has been delivered today the 7th August 2020 in the absence of parties but with leave not to enter appearance. If the applicant is still interested in appealing against the judgment of this court he is reminded to seek leave of the Court of Appeal in terms of **Rule 45(b) of the Court of Appeal Rules 2009, GN 368 of 2009.**

The signed ruling and the drawn order are both ready for collection free of charge from the court registry today 7th August 2020.

Z. N. Galeba
JUDGE
07.08.2020