

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

**MISC. LANDAPPLICATION No. 04/2018**

*(Arising from land Appl. No. 20/2017 HC at Bukoba & original land appl. No. 13/2013 DLHT at Bukoba)*

**THEOBARD RUGAMBWA-----APPLICANT**  
**VERSUS**  
**RUGIMBANA DIVO RUGAIBURA-----RESPONDENT**

**RULING**

*26<sup>th</sup> November & 11<sup>th</sup> December, 2020*

***Kilekamajenga, J.***

The applicant lodged this application seeking leave to appeal to the Court of Appeal of Tanzania. The application is made under **section 47 (1) of the Land Disputes Courts. Act, Cap. 2016 RE 2002** and it is accompanied by an affidavit deposed by the applicant. On the other hand, the respondent filed a counter affidavit resisting the application and raised a point of preliminary objection. The objection was finally dismissed allowing the application to be heard on merit. When the application was scheduled for hearing, the applicant appeared in person while enjoying the legal services of the learned advocate, Mr. Jackson Liwewa whereas the respondent was represented by the learned advocate Mr. Aaron kabunga.

During the oral submission, the counsel for the applicant prayed to adopt the applicant's affidavit,. He further argued that leave is the legal requirement for all matters originating from the lower courts. However, leave to appeal to the Court of Appeal may be granted where the applicant has raised a point of law or where the matter is fit for determination by the Court of Appeal. He fortified his argument with the case of **Nurbhain Ruttansi v. Ministry of water Construction, Energy and Environment [2005] TLR 220.**

Mr. Liwewa further submitted that for the applicant to be granted leave to appeal to the Court of Appeal, there must be chances of success in the intended appeal as it was stated in the case of **British Broadcasting Corporation v. Erick Application No. 138 of 2004.** He argued that the applicant applied for extension of time but the application was misconceived and it was decided that he was supposed to apply for leave to appeal to the Court of appeal. He insisted that the applicant was supposed to be granted the order he applied for. To cement his argument, he referred the Court to the Case of **Edson Mbogoro v. OC – CID**

**Songea District and AG – Songea, Civil Appeal No. 44 of 2004.** He finally prayed for the leave to be granted.

On the other hand, the counsel for respondent objected the application. He prayed for the respondent's counter affidavit to be adopted to form part of the submission. Mr. Kabunga further argued that leave to appeal to the Court of Appeal is not an automatic right but a discretion of the Court. The requirement for applying for leave intends to prevent litigants who want to approach the Court of Appeal of Tanzania without good reasons.

In this case, the applicant lost the case in the District Land and Housing Tribunal at Bukoba. He lodged an appeal before this Court out of time which was dismissed. The applicant did not file notice to the Court of Appeal and now he wants to challenge the dismissal order. Mr. Kabunga stated that the Court can still review its own decision because the Court of Appeal is likely to return this matter back to this Court. He urged the Court to dismiss the application with costs.

When rejoining, the counsel the applicant argued that review is not an alternative to appeal. The decision of this Court was marred with misconception. He reiterated the prayer to allow the application.

In the application for leave to appeal to the Court of Appeal, the law is settled. Leave may be granted where there is a point of law, or the intended appeal stands a good chance of success or there is a point of public importance to be determined by the Court of Appeal. There a number of cases that has insisted on the sufficient cause for leave to appeal to the Court of Appeal. See, the cases of **Loyce Butto Shushu MacDougal v. Studi Bakers Tanzania Limited and Khalid Shabani Mtwangi**, Misc. Land Case Appeal No. 220 of 2008. In the case of **Harban Haji Mosi and Another v. Omar Hulal Seif and another**, civil Reference No. 19 of 1997 (unreported) which was quoted with approval in the case of **Rugatina C.L v. The Advocates Committee and Clavery Mtindo Ngalapa, Civil Application No. 98 of 2010**, the Court of Appeal stated that:

*Leave is granted where the proposed appeal stands reasonable chances of success or where, but not necessarily the proceedings as 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 spectre of unmeriting matter and to enable it to give adequate attention to cases of true public importance.*

The same principle was reiterated in the case of **British Broadcasting Corporation v. Eric Sikujua Ng'amaryo, Civil Application No. 133 of 2004** (unreported) thus:

*Needless to say, 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 on the materials before the Court. As a matter of general principle, leave to appeal will be granted where the grounds of appeal raise issue of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal.*

In the instant application, the applicant was aggrieved with the decision of the District Land and Housing Tribunal at Bukoba, he thereafter appealed to this Court, though out of time. The appeal was dismissed. Instead of applying for leave to the Court of Appeal to challenge the dismissal order of this Court, the applicant applied for extension of time before this Court.

The Court found the application for extension of time misplaced because the applicant was supposed to file leave to the Court of appeal. In my view this Court was right to reject the application for extension of time.

Now, I am obliged to determine whether the applicant has advanced good cause for this Court to grant leave to appeal to the Court of Appeal. I have carefully perused the whole file and understood the nature of the dispute. Based on the position of law stated above, there might be chances of success in the intended appeal hence the intervention of the Court of Appeal is needed. I hereby allow the application and costs of this application to follow in the course. Order accordingly.

Dated at Bukoba this 11<sup>th</sup> December 2020.

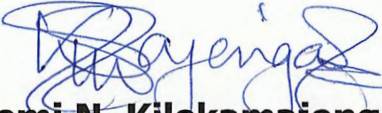


  
**Ntemi N. Kilekamajenga**  
**JUDGE**  
**11/12/2020**

**Court:**

Ruling delivered this 11<sup>th</sup> December 2020 in the presence of the applicant present in person and the counsel for the respondent, Mr. Frank John (Adv).



  
**Ntemi N. Kilekamajenga**  
**JUDGE**  
**11/12/2020**