

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[LAND DIVISION]

AT ARUSHA

MISC. LAND APPLICATION NO. 22 OF 2020

(C/F High Court of Tanzania Land Appeal No. 16 of 2017; Original Land Application No. 11 of 2013, District Land and Housing Tribunal for Karatu at Karatu)

JOSEPHAT BURA APPLICANT

Versus

GESI DUUMA GWAYDAMI RESPONDENT

RULING

27th November & 15th December, 2020

Masara, J.

Josephat Bura, the Applicant herein, brought this Application under Section 47(2) of the Courts (Land Disputes Settlements) Act, Cap. 216 [R.E 2019], seeking to be granted leave to appeal to the Court of Appeal against the decision of this Court in Land Appeal No. 16 of 2017, Mzuna, J, dated 3rd May, 2019. The Application is supported by the affidavit of Josephat Bura, the Applicant. The Respondent filed a Counter Affidavit deponed by himself opposing the Application.

Both parties appeared in court in person, unrepresented. On 02/10/2020 when the application came up for hearing, it was resolved that the application be heard through filing written submissions. Both parties filed their submissions within the scheduled time.

Facts leading to this application as per the affidavits and annexes in support thereof can be summarized as follows: The Appellant was dissatisfied with the decision of Karatu District Land and Housing Tribunal (the Tribunal) in Land Application No. 11 of 2013. He appealed to this Court vide Land Appeal No. 16 of 2017. His appeal was unsuccessful in the judgment delivered on 3rd May, 2019. He thereafter lodged a Notice of Appeal intending to appeal to the Court of Appeal. On 30th May, 2019, he filed Misc. Land Application No. 38 of 2019 craving for leave and a certificate on points of law but on 27th March, 2020 he withdrew the same with leave to re-file after realizing that certificate on points of law is not a requirement of law in his intended appeal. On 2nd April, 2020 he filed Misc. Land Application No.22 of 2020 seeking leave to Appeal to the Court of Appeal but the same was struck out following a preliminary objection raised by the Respondent. The Applicant was allowed to amend the chamber summons and bring a new one since the former was improper for being preferred under a wrong provision of the law. On 7/10/2020 he filed an amended chamber summons, hence this application.

Submitting in support of the application, the Applicant sought to adopt and rely on his affidavit in support of the application. On the application, he submitted that leave is a legal requirement for one to obtain before filing an appeal to the Court of Appeal, therefore this application is in compliance with the procedure provided by the law. He averred that the intended appeal has contentious points of law which require determination by the Court of Appeal. The legal points as canvassed are also spelt out under paragraph 6

of his affidavit; namely, whether the decision given by the High Court was proper when (sic) the record shows that the assessors were not involved in the determination of the matter during the trial at the District Land and Housing Tribunal; whether the decision of the trial District Land and Housing Tribunal was proper by its failure to adduce reasons for the change of Chairman in the hearing of the matter; and, whether the High Court was correct when it failed to consider the legality of the decision of the matter. He concluded that the instant application raises contentious points of law for necessitating intervention of the Court of Appeal.

Opposing the application, the Respondent contended that the Applicant's reasons for filing the application features in paragraph 6(a), (b) and (c) of his affidavit but in his written submissions he added nothing. He amplified that in order for leave to be granted the grounds of appeal ought to raise issues of general importance or novel points of law or prima facie arguable appeal. However, in the Respondent's view the grounds raised in the Applicant's affidavit appear to be vexatious, useless and hypothetical as the complaints raised cannot fault the concurrent finding of the trial Tribunal and this Court and if leave is granted it will manifestly defeat the doctrine "*justice delayed is justice denied.*"

The Respondent further stated that it has been difficult for him to execute the decree as complained in her counter affidavit and the Tribunal chairman played a big role in defeating the ends of justice. Further, it is his contention that whereas the grant of leave is a requirement of the law, the grant is

made where there is a serious matter of law to be resolved by the Court of Appeal. He added that it is clear from the evidence on record that no any ground that warrant leave as sought has been demonstrated by the Applicant. He therefore prays that the application be dismissed with costs.

I have thoroughly considered the Applicant's application as supported and opposed by the affidavits of the parties as well as their rival written submissions. The sole and pertinent issue to determine is whether there are arguable grounds/points for the Applicant to be granted leave to appeal to the Court of Appeal.

The Applicant has maintained that his intended appeal to the Court of Appeal is necessitated by the fact that there are points of law emanating from the impugned judgment which calls for the intervention of the Court of Appeal to address. The alleged legal points to be addressed by the Court of Appeal feature in paragraph 6(a), (b) and (c) of the affidavit. In applications for leave to appeal to the Court of Appeal, the major consideration is whether the intended grounds of appeal raise issues of general importance or a novel point of law or a prima facie or arguable appeal. I am guided by the decision in ***Simon Kabaka Daniel Vs. Mwita Marwa Nyang'anyi & 11 others*** [1989] TLR 64. Leave is not granted where the grounds of appeal are frivolous, vexatious, useless or hypothetical. This has been reiterated by Courts in numerous decisions including ***Harban Haji Mosi and Another Vs. Omar Hilal Seif and Another***, Civil Reference No. 19 of 1997 (unreported) where the Court held:

"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 spectre of unmeriting matters and to enable it to give adequate attention to cases of true public importance."

In a subsequent decision of ***British Broadcasting Corporation Vs. Eric Sikujua Ng'maryo***, Civil Application No. 138 of 2004 (unreported), the Court of Appeal observed:

"Speaking for myself, the issues raised by the Applicant cannot be labelled as frivolous, vexatious or useless. I think there is need for this Court to resolve the rival contentions of the parties and have an authoritative interpretation by this Court on the disputed provisions of the Advocates Remuneration and Taxation of Costs Rules, 1991."

Applying the above principles in the instant application, the Applicant alleges that in the impugned judgment the assessors were not involved in the Tribunal. As I understand it, the requirement of sitting with assessors in the Tribunal is a legal requirement. Its non-compliance has been held to be repugnant to law. The other ground raised is the change of the Tribunal Chairman without affording reasons for that change. This also, if true, calls for the intervention of the Court of Appeal to address. This Court is, however, not in a position to determine whether the intended issues are genuine or otherwise as its decision is the one contested. It is the Highest Court of the Land that has mandate to examine and uphold or vary the decisions made by this Court.

I do not agree with the Respondent that the Applicant's application is frivolous and vexatious considering the time the Applicant has spent in this Court and the number of applications he has filed in a bid to battle for his right to appeal to the Court of Appeal. Despite his applications encountering legal impediments, he has not given up. The reasons advanced by the Applicant sufficiently persuades this Court that there is a need of the parties herein to be given an opportunity to have their matter addressed by the Court of Appeal for the interest of justice.

From what I have endeavored to discuss above, I find merits in the application. The Applicant is granted leave to appeal to the Court of Appeal as prayed. The Applicant to file his appeal to the Court of Appeal within 21 days from the date of this order. Costs shall abide to the outcome of the intended appeal.

Order accordingly.




Y. B. Masara

JUDGE

15th December, 2020