

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

MISC. LAND CASE APPLICATION NO. 76 OF 2020

(Originating from land case appeal No. 42/2020, land case appeal No. 15/2018 of the High Court at Bukoba, land case appeal No. 20/2018 of the Bukoba District Land and Housing Tribunal and originating from land case No. 35/2016 of Kibeta Ward Tribunal)

MARIA LEONARD.....APPLICANT
VERSUS
STEPHANIA HENRY NZANIYE.....RESPONDENT

RULING

19th May & 21st May 2021

Kilekamajenga, J.

The applicant, Maria Leonard, lodged this application moving the court to grant leave to appeal and certify that there are points of law to be determined by the Court of Appeal of Tanzania. The application was made by way of chamber summons supported with an affidavit deposed by the applicant. In moving this court, the applicant invoked the following provisions of the law: **Section 47(2)(3) and (4) of the Land Disputes Courts Act, Cap. 216 RE 2019** and **section 5(1)(c) of the Appellate Jurisdiction Act, Cap. 141 RE 2019** read together with **Rule 45(a) of the Tanzania Court of Appeal Rules 2009**. When the application came for hearing, the applicant appeared in person whereas the respondent enjoyed the legal services of the learned Advocated, Mr. Peter Matete. The applicant prayed to dispose of the application by way of written submissions. Her prayer was not objected and therefore granted.



In the written submission, the applicant raised a lot of facts without any particular order though the whole argument revolved around the fact that the applicant's appeal was dismissed for being filed out of time. Before the dismissal order, the applicant was allowed to file the appeal within 14 days but she did not comply with the order of the court. In her application, she assailed the court for miscalculation of the 14 days. She further argued that the judge was not supposed to dismiss the appeal but strike it out in order to allow her to lodge an application for extension of time. By dismissing the appeal on the reason that it was time barred, the court violated the law hence the applicant has a point of law for the intervention of the Court of Appeal of Tanzania.

On the other hand, the counsel for the respondent insisted that the appeal was filed after 15 days something which violated the order of the court. The court did not miscalculate the time under which the applicant was supposed to file the appeal. Where the appeal is filed out of time, it suffers the consequences of being dismissed as per **section 3 of the Law of Limitation Act**. The counsel was of the view that the applicant advanced mere allegations which are not point of law to move the Court of Appeal of Tanzania.

When rejoining, the applicant did not raise any substantial argument rather than reiterating the points advanced in the submission in chief.

After considering the submissions from the parties and other information available in the court file, I wish to reiterate the reasons that move the court to grant leave to Appeal to the Court of Appeal of Tanzania. Such reasons have been reiterated in different judicial decisions which I am obliged to consider. In the case of **Rutagatina C.L. v. The Advocates Committee and Clavery Mtindo Ngalapa, Civil Application No. 98 of 2010**, the Court stated that:

An application for leave is usually granted if there is good reason, normally on a point of law or on a point of public importance, that calls for this Court's intervention.

Furthermore, in the case of **Harban Haji Mosi and Another v. Omar Hilal Seif and Another, Civil Reference No. 19 of 1997** (unreported) which was quoted with approval in the case of **Rutagatina** (*supra*) the court added more points to consider in granting leave to appeal to the Court of Appeal of Tanzania thus:

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 un-meriting matters and to enable it to give adequate attention to cases of true public importance.

The case of **British Broadcasting Corporation v. Eric Sikuja Ng'maryo, Civil Application No. 133 of 2004** (unreported) which was quoted with approval in the case of **Rutagatina** (*supra*) also stated that:

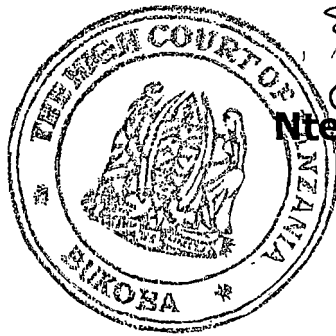
'Needles to say, leave to appeal is not automatic. It is within the discretion of the Court to grant or refuse leave. The discretion must, however be judiciously exercised on the materials before the court. As a matter of general principle, leave to appeal will be granted where the grounds of appeal raise issues of general importance or novel points of law or where the grounds show a prima facie or arguable appeal.'

In the instant application, the application sought two things at a time; **first** leave to approach the Court of Appeal; **second**, certificate on point of law. What may be gleaned from the above jurisprudence of law may be put together as follows: Leave to appeal to the Court of Appeal is not an automatic right; before the same is granted, the applicant must show that there is a point of law. Such point of law must demand the intervention of the Court of Appeal. In my view, as existence of point of law is a ground for leave, where there is a point of law, automatically leave must be granted. Also, the intended appeal must have points or issues which of public important worthy to be determined by the Court of Appeal. Leave may also be granted based on the substance of the intended appeal. The measure should be whether or not the appeal may succeed on appeal because it may be grave injustice to deny the applicant to approach the temple of justice where his/her lost rights will be recovered. The court may grant

leave where the records of the court have illegalities which have not been addressed by the lower courts. The Court of Appeal being the most supreme in the judicial hierarchy must be given the opportunity to address the illegality apparent on the face of the court records. Furthermore, where the court was not tried on merit, it is always pertinent to grant leave so that the rights of the parties do not end on matters of technicalities rather than on the merit of the case.

In this case, the perusal of the whole file reveals that the applicant's case has not been determined by this court on merit because the same was dismissed for being filed out of time. However, it is very unfortunate that the case is hinged on matters which, in my view, do not need the intervention of the Honourable Court of Appeal. I find it a serious misdirection to allow the application while knowing that the matter has no merit. Doing so will exacerbate costs and wastage of time on the applicant on an issue which may not bear fruits. For that reason therefore, there is no point of law involved in this matter hence the certificate on point of law is denied. The leave is also denied for lack of merit in this matter. I hereby dismiss the application. No order as to costs. Order accordingly.

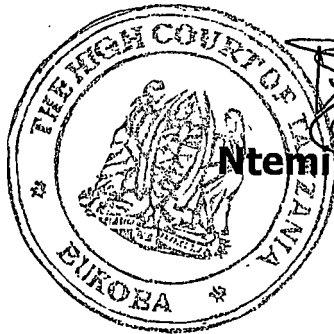
DATED at BUKOBA this 21st Day of May, 2021.




Ntemi N. Kilekamajenga.
JUDGE
21/05/2021

Court:

Ruling delivered in the presence of the applicant and the counsel for the respondent, Mr. Peter Matete (Adv) this 21st May 2021. Right of appeal explained.




Ntemi N. Kilekamajenga.
JUDGE
21/05/2021

