

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF BUKOBA)**

**AT BUKOBA**

**Misc. LAND APPLICATION No. 59 OF 2020**

*(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in the Land Application No. 134 of 2017 & Original from Kagondo Ward Tribunal in Civil Case No. 56 of 2019)*

**BENJAMIN KODEMA ----- APPLICANT**

**Versus**

**CHARLES KAMANDO ----- RESPONDENT**

**RULING**

**06.07.2021 & 06.07.2021**

**Mtulya, J.:**

Mr. Benjamin Kodema (the Applicant) is praying for leave to access the Court of Appeal to dispute the decision of this court in **Misc. Land Appeal No. 60 of 2017** arising from the **District Land and Housing Tribunal for Kagera at Bukoba** (the Tribunal) in **Misc. Application No. 134 of 2017** (the Application) originated at **Kagondo Ward Tribunal** (the Ward Tribunal) in **Civil Case No. 3 of 2017** (the case). In his Affidavit at paragraph 8, the Applicant has registered two points of law, namely; the Tribunal for Kagera granted execution of the decision in **Civil Case No. 3 of 2017** without identification of

exact demarcations of the land and uncertainty on whether the Applicant will remain with his land bought prior to the Applicant's land.

When the Application was scheduled for hearing, the Applicant, a lay person, without any legal representation, briefly submitted that the Respondent applied for execution against the land he bought sized 42 to 55 steps and was substantiated by evidence of the sale agreement tendered in the case during proceedings at the Ward Tribunal. According to the Applicant, the Respondent is currently intending to execute on other lands beyond the bought steps.

This submission was protested by the Mr. Charles Kamando (the Respondent) who invited Mr. Zeddy Ally to argue the appeal on his behalf. In his submission Mr. Zeddy submitted that the decision of the Ward Tribunal was never protested in any competent forum to this moment and that it was supposed to be executed by the Application in the Tribunal but it was protested by the Applicant in the Tribunal and this court unsuccessfully hence this Application for leave to access the Court of Appeal has no any merit whatsoever. In giving the reason of the submission, Mr. Zeddy stated that the Applicant is testing credibility of witnesses and evidences during execution stage which is not known in law or else it is an abuse of court process. With

remedies available to the Applicant, Mr. Zeddy submitted that the Applicant has proper remedies to protest the decision of the Ward Tribunal in an appeal stage.

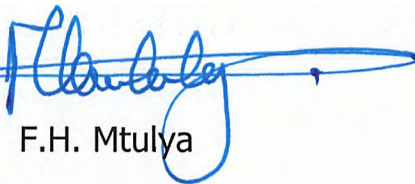
On my part, I think the Applicant is asking leave in this court to access the Court of Appeal to determine the raised points of law. It is my role to see at the face of record if there is such a point of law, and if it is, I have to grant the prayer. My role cannot stretch into the merit of the case. Record in this application shows that the Applicant was denied the right to be heard in the Ward Tribunal which decided demarcations on land and stated on the trees demarcating the land in dispute whereas the document in evidence registered in the Ward Tribunal displays the size of the Respondent's land being 42 to 55 steps. This discrepancy in the document and determination of the Ward Tribunal invited the Applicant to protest the execution for want of certainty. Now he is asking interpretation from our superior court in judicial hierarchy.

Whether this is a proper route in the course or not, and whether the Applicants tests the veracity of evidence and witnesses in the Ward Tribunal, that is not the business of this court. In the present Application there is protest of the execution which shows merit in search of justice.

As part of cherishing article 13 (6) (a) of the Constitution of the United Republic of Tanzania [Cap .2 R.E 2002, I have decided to grant the Applicant leave to access our superior court in accordance to laws regulating appeals from this court to the Court of Appeal.

It is so ordered.



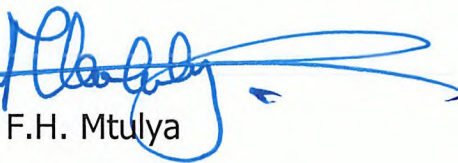
  
F.H. Mtulya

**Judge**

06.07.2021

This ruling was delivered under the seal of this court in chambers in the presence of the Applicant, Mr. Benjamin Kodema and in the presence of the Respondent's learned counsel, Mr. Zeddy Ally.



  
F.H. Mtulya

**Judge**

06.07.2021