

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)**

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 635 OF 2021

MAIMUNA MAHAGATILA APPLICANT

VERSUS

NURU ISSA MAHAGATILA RESPONDENT

RULING

24th February, & 22nd March, 2022

ISMAIL, J.

This application calls for the Court's indulgence to grant leave, for the institution of an appeal to the Court of Appeal of Tanzania. The intended appeal seeks to challenge the decision of the Court (Hon. Ngwembe, J.), in Civil Revision No. 24 of 2021. The position taken by the Court in the said decision is that the revisional proceedings were lacking in merit, and that the decision of the District Court, that applicant sought to challenge was enforceable and executable. It is this decision, delivered on 19th November, 2021, that has ignited the applicant's journey to the Court of Appeal.

The affidavit affirmed by the Applicant herself supports the application. Of significance in the supporting affidavit are the contents of paragraph 18 in which the intended grounds of appeal are stated.

The application has been fervently disputed by the respondent, through his counter-affidavit affirmed in reply to the supporting affidavit. The broad view taken by the respondent is that the Court was quite right in concurring with the decision of the District Court that nullified proceedings in Probate and Administration Cause No. 56 of 2021, on account of illegalities and irregularities cited. The respondent averred that there are no irregularities which would require determination by the Court of Appeal.

Disposal of the application was done through written submissions. Mr. Richard Kinawari, learned counsel for the applicant, dwelt onto the merits of the grounds of the intended appeal as contained in the supporting affidavit. With respect to locus standi, Mr. Kinawari's take is that it was erroneous for this Court to hold that the decision of the District Court was right while no administrator had been appointed the estate. He argued that the Court of Appeal is in a position to decide if it was in order for the applicant to be denied the right of applying for letters of administration.

Learned also argued that there is a serious legal question that requires intervention of the Court of Appeal, and this is in respect of whether the

District Court had powers of revising the decision of the Resident Magistrates' Court in Civil Appeal No. 5 of 2021. His contention is that revisional powers under section 22 (1) of the Magistrates' Courts' Act, Cap. 11 R.E. 2019 were stretched too far and irregularly.

The applicant's counsel submitted, as well, that revisional proceedings raised *suo motu* were exercised and done outside the time prescription, contrary to section 22 (4) of Cap. 11, and that the Court ought to have considered all of that before it dismissed the application.

With regards to ownership of the disputed property, the contention by the applicant's counsel is that the judgment in Civil Appeal No. 5 of 2018 is at variance with the decree extracted from the said judgment.

The contention by Ms. Wamunza, learned advocate for the respondent, is that the applicant has not raised any serious legal problems which need to be addressed by the Court of Appeal. She argued that the court was quite in order when it held that the matter was indeed *res judicata*, and that the fact that the question of appointment of an administrator of the estate of Fukano Magona is not an issue for determination by the Court of Appeal. Ms. Wamunza took a view that the Court did not err in holding that the applicant has no *locus standi* to pursue the matter.

With respect to exercise of revisional powers under section 22 (1) of Cap. 11, learned counsel contended that such powers may be invoked *suo motu*, or where there is an application for revision before the court. While denying that decision in Civil Appeal No. 5 of 2018 was revised by District Court, learned counsel argued that there was nothing wrong with the latter's exercise of the revisional powers.

With regards to ownership of the property, the respondent read no confusion in the decisions. Learned counsel termed them straight forward and requiring no intervention by the Court of Appeal. The respondent was adamant that none of the issues raised by the applicant require any intervention of the Court of Appeal. He urged the Court to find that the application has no merit and that the same be dismissed with costs.

From the parties' rival arguments, the singular question for settlement is whether the application has raised sufficient grounds or a disturbing feature capable of engaging the Court of Appeal in the intended appeal.

The law in this respect is settled in this country. It is to the effect that grant of leave is premised on the applicant's ability to demonstrate that there are points of law or facts resolved by the Court but, on account of their alleged decisional errors, they need to be revisited by the Court of Appeal, before rights of the contending parties are conclusively determined. It

implies, therefore, that leave is not granted as of right or as a mere walkover by a party desiring that it be granted. It is discretionary grant, served on a party if such discretion is properly triggered. This is done through a presentation that will exhibit the presence of an arguable case. This position has been restated times without number. In ***Bulyanhulu Gold Mine Ltd v. Petrolube (T) Ltd & Another***, CAT-Civil Application No. 364/16 of 2017 (unreported), the Court of Appeal of Tanzania made the following scintillating observation:

*"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 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 prima facie or arguable appeal (see: ***Buckle v Holmes*** (1926) All E.R. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted."*

See also: ***British Broadcasting Corporation v. Eric Sikujua Ng'maryo*** (supra); ***National Bank of Commerce v. Maisha Musa Uledi (Life Business Centre)***, CAT-Civil Application No. 410/07 of 2019; ***Regional Manager TANROADS Lindi v. DB Shapriya Company Ltd***,

CAT-Civil Appeal No. 86 of 2020; and ***Integrated Property Investment (T) Limited and 2 Others v. The Company for Habitat and Housing in Africa***, CAT-Civil Appeal No. 107 of 2015; and ***Kumbwandumi Ndemfoo Ndossi v. Mtei Bus Service Limited***, CAT-Civil Application No. 27/02 of 2016 (all unreported).

The clear position discerned from the cited decisions is that leave to appeal to the Court of Appeal will only be granted if the application is based on solid grounds, premised on serious points of law or law and fact. The grounds of appeal must raise issues of general importance or a novel point of law, or demonstration that there is a *prima facie* or arguable appeal

In the instant application the applicant's basis for the quest for leave is the depositions made in paragraph 18 of the affidavit, which she considers to be a 'sure' ticket in her journey to the Court of Appeal. This position is controverted by the respondent who sees nothing weighty and sound to serve as the basis for inviting the Court of Appeal to lay its hands on.

While I am mindful of the fact that the validity, propriety, soundness and plausibility or otherwise of the points of contention is the remit of the Court that will preside over the intended appeal, I take the view that these are pertinent issues raising some serious points which constitute an arguable case. The questions touching on the scope of powers of the District Court on

revision; whether such powers entail revision of the decision of the Resident Magistrates' court; whether revisional proceedings raised suo motu are subjected to any time prescription are, in my considered view, issues of general importance and they sufficiently raise a *prima facie* case. They are real issues that are neither frivolous, vexatious, useless, nor are they hypothetical. I am convinced that, in their totality, these are issues that fit in the description of issues in respect of which guidance of the Court of Appeal is rightly called into action.

In consequence of all this, I hold the view that this application is meritorious and has passed the threshold for its grant. Accordingly, the same is granted. Costs to be in the cause.

Order accordingly.

DATED at **DAR ES SALAAM** this 22nd day of March, 2022.




M.K. ISMAIL
JUDGE