

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

**MISCELLANEOUS LAND CASE APPLICATION NO. 23 OF 2020**

**(C/F Land Appeal No. 9 of 2019 High Court at Moshi)**

**VALERIA LUDOVICK NGATARA.....APPLICANT**

**Versus**

**FLORA STANSLAUS PIMA**

**(Suing as administratrix of Estate of**

**the late Stanlaus Pima Mushi) ..... RESPONDENT**

Last Order: 12<sup>th</sup> May, 2022

Date of Ruling: 21<sup>st</sup> June, 2022

**RULING**

**MWENEMPAZI, J.**

The applicant filed this application for leave to go to the Court of Appeal of Tanzania under section 47(2) of the Land Disputes Courts Act, Cap.216 R.E. 2019. The application is supported by an affidavit sworn by the applicant in which she has listed under paragraph 7 grounds upon which

the intended appeal is sought to be challenged. The grounds are as follows:

- i. That the learned judge erred in law and in fact by deciding in favour of the respondent basing on the deceased's will (Exhibit D-3) while disregarding all appellant's evidence including documentary exhibits.
- ii. That the learned trial judge erred in law and in fact when assessing the validity of the will by holding that the will was not valid.
- iii. That the learned trial judge erred in law and in fact when held that Application No. 61 of 2016 was not *res-judicata* and otherwise barred by time limitation.
- iv. That the learned trial judge erred by not acting on Exhibit D2 and supporting oral evidence that the late Stanslaus Pima Mushi had made an outright disposition of the suitland to the late husband of the appellant.
- v. That the learned trial judge erred in law and in fact when failed to properly analyze the evidence.

The applicant has also averred in her affidavit that from the above grounds the intended appeal raises substantial points of laws and facts. The

respondent on the other hand contested the application through a counter affidavit and a supplementary affidavit both sworn by Mr. Ibrahim Albert Komu, learned advocate representing the respondent.

When the matter was called up for hearing on 30<sup>th</sup> March 2022, the Applicant was represented by Mr. Charles Mwanganyi, learned advocate while the Respondent was represented by Mr. Ibrahim Komu learned advocate. Mr. Komu prayed for the application to be disposed by way of written submission. There being no objection from the applicant's side the court granted leave to the parties to dispose the application by way of written submission as scheduled.

In his brief submission in support of the application, Mr. Mwanganyi submitted that the Applicant was aggrieved by the decision of this court delivered by Honorable Mkapa J. on 5<sup>th</sup> March, 2020 in Land Appeal No. 9 of 2019. The applicant intends to appeal against the decision to the Court of Appeal of Tanzania hence she has preferred the present application for leave. The learned counsel prayed for the Applicant's affidavit in support of the application be adopted to form part of his submission.

Submitting further Mr. Mwanganyi went on giving a brief background of the matter where he stated that the Respondent herein alleging to be the administratrix of the estate of the late Stanslaus Pima and had instituted an application against the applicant at the District Land and Housing Tribunal for Moshi. The application was to the effect that the Applicant had trespassed over the suitland by cultivating and planting crops without the consent of the Respondent. That after hearing the matter the tribunal decided in favour of the Respondent. That being dissatisfied by the tribunal decision the Applicant appealed before this court which upheld the tribunal's decision. That being aggrieved by this court's decision the applicant preferred the present application for leave to appeal to the Court of Appeal of Tanzania.

Mr. Mwanganyi submitted that it is trite under the law that when determining an application for leave to appeal to the court of appeal courts must ascertain if there is legal point worthy of being considered by court of appeal. He submitted that this was so stated in the case Of **Nurbahi Raittansi Vs. Ministry of Water Construction Energy and Enviroment and Another** [2005] TLR 220.

In order to clarify further Mr. Mwanganyi submitted that not only that there must be a legal point worth to be determined but also leave to appeal may be granted where the court feels that ground to appeal raises issues of general importance or where grounds show prima facie or arguable appeal. The counsel supported his averment by referring to the case of **Buckle vs. Holmes [1926] ALL ER 90.**

Mr. Mwanganyi further submitted by referring to the applicant's affidavit where grounds of appeal are stated and argued that the grounds contain both legal point worth to be determined by the Court of Appeal also the grounds raise both points of laws and issues of general importance to be determined by the Court of Appeal.

Responding to the counter affidavit and the supplementary one filed by the respondent with respect to the issue of Applicant's signature being different from the one in the written statement of defence, Mr. Mwanganyi submitted that there is no such affidavit filed before this court deponed by Advocate Shio therefore he prayed for the supplementary affidavit to be expunged from record for being contrary to the affidavit filed by the Applicant. It was Mr. Mwanganyi's further submission that the issue of

applicant's signature is devoid of any merit as the same belonged to the applicant and did not in any way prejudice the respondent therefore it ought to be overruled for being baseless. In the end the learned counsel prayed for this court to grant the leave to appeal to the Court of Appeal of Tanzania.

Responding to the submission the learned counsel for the applicant submitted that granting leave to appeal to the court of appeal is not automatic rather it is upon the applicant to show good cause which means there must be a legal point worth to be determined by the court of appeal. The learned counsel further averred that the purported points of law had already been adequately dealt with by this court and that further appeal merely intended to delay ends of justice.

The respondent also submitted that the decisions of the trial and appellate courts were very clear and just. That the grounds laid down by the Applicant do not suffice to get the attention of the court of appeal as all of them are not legal points. He argued that there are no legal issues in applicant's affidavit to move this Honourable court to grant leave. He further submitted that there is no any procedural irregularity to fault the

trial tribunal proceedings and or first appellate court as the applicant argued. He contended that the Applicant is only trying to disturb the Respondent over quiet use and possession of the suit land. The Respondent was of the view that allowing this application would result into endless litigation of which Respondent would be mostly prejudiced. On the basis of his submission the respondent's counsel prayed for the application to be dismissed with cost.

Rejoining the submission Mr. Mwanganyi reiterated his submission in chief and added that the fact that his grounds of appeal were dealt with by the first appellate court is the reason why the Applicant was aggrieved with the decision and prays for leave to appeal to the court of appeal to have worth consideration on the points raised. Lastly, he prayed for the application to be granted.

Having considered applicant's affidavit and submissions from both parties the main issue for determination is whether the applicant has shown sufficient cause to be granted leave to appeal to the Court of Appeal. In determining this issue, the role of this Court is to consider whether or not arguable issues have been raised in the proposed grounds of appeal.

**Section 47(2) of the Land Disputes Courts Act, Cap.216 R.E 2019**

provides that:

*"A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may with leave of the High Court or Court of Appeal, appeal to the Court of Appeal."*

The above quoted provision depicts that grant of leave to Court of Appeal is in the absolute discretion of this court and not an automatic right. A party has therefore a duty to persuade the court that he/she has genuine grounds and must demonstrate that the proposed grounds appeal raises arguable or contentious issues worth to be considered by the Court of Appeal. In order for the Court to exercise its discretion, it is crucial that the same be furnished with the necessary information which is usually obtained from the affidavit deponed in support of the application for leave.

Examining the affidavit sworn by the applicant, he has clearly pointed out, under paragraph 7, grounds upon which his intended appeal is based on. In these grounds the Applicant intends to challenge the decision of this court on a number of issues including matters relating to validity of the



will, res - judicata and time limitation for the application. These are legal issues which are already controverted by the applicant and for that reason, I find it just to allow the same to be attended by the Court of Appeal for the interest of justice.

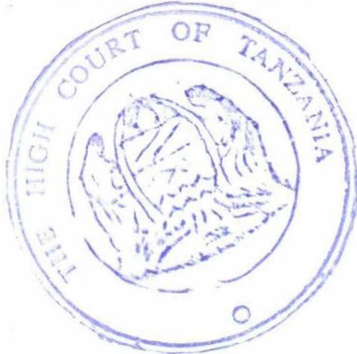
Also, appeal is a party's Constitutional right which should be denied only when there is a sound reason. The Respondent has not advanced any good reason as to why this application should not be granted, he has only alleged matters which are irrelevant in determining the present application. In his supplementary counter affidavit, the respondent has alleged that the Applicant's affidavit was not signed by her and the signature differed the one that appeared in the Written Statement of Defence in Land Application No. 61 of 2016. This allegation is immaterial in so far as the present application is concerned. What is in issue in the present application is whether the applicant has established grounds necessary to be granted leave to appeal.

Given what has been discussed above and considering, the applicant's right to appeal which has been enshrined under Article 13 (6) (a) in the

Constitution of the United Republic of Tanzania, 1977 as amended from time to time. Let her get the opportunity to be heard as requested.

The application for leave to appeal to the Court of Appeal is thus granted with costs to follow event. It is so ordered.

Dated and delivered at Moshi this 21<sup>ST</sup> day JUNE, 2022.



  
**T. M. MWENEMPAZI**  
**JUDGE**

Ruling delivered at Moshi this 21<sup>st</sup> day of June, 2022 in the absence of the parties.

  
**T. M. MWENEMPAZI**  
**JUDGE**