

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO. 28 OF 2020

(C/F High Court of Tanzania at Arusha in Land Appeal No. 1 of 2018, from the District Land and Housing Tribunal of Babati in Land Appeal No. 84 of 2016, Originating from Land Application No. 03 of 2016 at Kiru)

FAUSTINE PAULO APPLICANT

VERSUS

WILLIAM PASHA..... RESPONDENT

RULING

4/3/2022 & 20/7/2022

ROBERT, J

The Applicant, Faustine Paulo, seek to be granted leave to appeal to the Court of Appeal of Tanzania against the Judgment of this Court in Land Appeal No. 01 of 2020. The application is supported by an affidavit sworn by the applicant.

The Applicant unsuccessfully preferred an appeal to this Court in Land Appeal No.1 of 2018. Aggrieved by the decision of this Court, lodged a notice

of appeal to the Court of Tanzania against the decision of this Court on the point of law that: *Whether the decision made by the Ward Tribunal without properly constituted coram is valid.*

The application is opposed by the Respondent, William Pasha, who filed his counter-affidavit alleging that this application is of no merit and therefore of no legal effect.

When this application came up for hearing the Applicant was represented by Ms. Fauzia Mustapha Akunaay, learned Counsel whereas the Respondent appeared in person without representation. At the request of parties, the application was argued by way of written submissions.

Submitting in support of this application, counsel for the Applicant simply argued that "the main ground in the intended appeal is whether the decision of the Ward Tribunal which is not properly constituted is valid. The appeal is therefore on point law".

In response, counsel for the respondent submitted generally that, first, the dispute at hand is not about the boundaries. Secondly, it is not true that Kiru Ward Tribunal was not properly constituted during the hearing of the matter. Thirdly, the intended appeal lacks merit on the ground that there is

no any valid point of law. Fourthly, it is not true that there are legal points which need consideration of the Court of Appeal of Tanzania.

From the submissions and records of this application, the Court is invited to determine whether there is merit to this application.

The conditions for granting an application for leave to appeal to the Court of Appeal are well settled in decided cases. In the case of **Citibank Tanzania Limited v. Tanzania Telecommunications Company Ltd and 5 others**, High Court of Tanzania (Commercial Division), Misc. Commercial Cause No. 6 of 2003, at Dar es Salaam (unreported), this Court observed that:

"I think it is now settled that, for an application for leave to appeal to succeed, the applicant must demonstrate that the proposed appeal raises contentious issues worth taking to the Court of Appeal or are of such public importance, or contain serious issues of misdirection or non direction likely to result in a failure of justice and worth consideration by the Court of Appeal....In an application of this nature, all that the Court needs to be addressed on, is whether or not the issues raised are contentious....the Court cannot look at nor decide

either way on the merits or otherwise of the proposed grounds of appeal."

In the present case, the concern raised by the Applicant as a ground for this application and the main ground in the intended appeal is whether the decision of the Ward Tribunal which is not properly constituted is valid. The applicant's counsel did not demonstrate if the intended appeal raises contentious issues worth of determination by the Court of Appeal or are of such public importance, or contain serious issues of misdirection or non direction likely to result in a failure of justice.

It should be noted that, in the impugned judgment of this Court, the Honourable Judge was invited to decide on whether the Ward Tribunal was properly constituted when determining this matter and this Court, as the second appellate Court, gave an exhaustive analysis and determination of that issue, in my considered view. In the circumstances, in this application the Applicant was expected to address this Court on what he considers to be not properly addressed by the High Court in the proposed ground of appeal which needs to be determined by the Court of Appeal and the reasons for such consideration. This Court considers that it is not enough for the applicant to simply mention the intended ground of appeal and claim that

there is a point of law to be determined by the Court of Appeal without demonstrating if the alleged point of law raises contentious issues worth of determination by the highest Court in the land. In the circumstances of this application, this Court is left without option but to dismiss this application for want of merit.

Accordingly, this application is dismissed with costs for want of merit.

It is so ordered.



A handwritten signature in black ink, appearing to read "K.N. Robert", is written above the printed name.

K.N.ROBERT
JUDGE
20/7/2022