THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. LAND APPLICATION NO 27 OF 2021

BI SHALKE NARAYANI ....APPLICANT

VERSUS

CLIFF JIWAN GODHU NARAAN ....RESPONDENT

RULING

Date of last Order: 14/06/2022
Date of Judgment: 28/07/2022

LALTAIKA, J.

The applicant herein **BI SHALKE NARAYANI** is seeking leave to appeal to the Court of Appeal of Tanzania against the ruling of Hon. Judge Z.G. Muruke of the High Court of Tanzania (Mtwara District Registry) at Mtwara in Misc. Land Application No. 7 of 2021 dated 24th of September 2021. The application is brought under Section 5(1)(c) of the Appellate Jurisdiction Act, Cap. 14 R.E. 2019, Section 47(2) of the Land Disputes Courts Act [CAP 216 RE 2019) and Rule 45(a) of the Tanzania Court of Appeal Rules, 2009 as amended by G.N. No.362 of 2017. The application is supported by an affidavit deponed by BI SHALKE NARAYANI

As alluded to above, the applicant is praying for this court to grant her leave to appeal to the Court of Appeal of Tanzania against the ruling of Hon. Judge Z.G. Muruke of the High Court of Tanzania (Mtwara District Registry)

at Mtwara in Misc. Land Application No. 7 of 2021 dated 24th of September 2021.

At this juncture, a brief recap of the matter is imperative. The respondent **CLIFF JIWAN GODHU NARAAN** successfully sued the applicant at Lindi District and Housing Tribunal (DLHT) at Lindi. Dissatisfied with the decision of the tribunal the applicant appealed to the High Court of Tanzania where the Court also ruled in favour of the respondent. Dissatisfied once again, the applicant decided to file an application for review but she discovered that she was out of time. She, therefore, applied in this court for extension of time so she could file the review.

In that application, (Miscellaneous Land Application No 07 of 2021) this court (Hon. Z.G. Muruke) rule that the application did not disclose any sufficient reasons for the delay and it was therefore dismissed. It is the applicant's wish to challenge the decision at the Court of Appeal of Tanzania.

Parties chose to dispose of this matter by way of written submissions. A schedule to that effect was jointly agreed and both parties strictly adhered to the deadlines agreed upon. At this juncture I extend my appreciation for their commitment.

On her part, the applicant submitted that she is aggrieved by the ruling of this court and went on to narrate the grounds for which leave is sought as quoted in Paragraph 6 of her Affidavit thus

> *"6. That one of the facts raised was the need to call upon the court to determine the facts that both applicant and respondent are administrators of estate in respect of the same disputed land."*

The applicant submitted further that it is her humble submission that this application is granted because, an appeal to the Court of Appeal without leave of the High Court is considered incompetent. She cited the case of **Mechanical Installation and Engineering Co. Ltd. Versus Abubakar Ndeza Maporo and another** [1987] T.L.R. 44.

The applicant finalized her application by an assertion that in her considered view the grounds of appeal raise issues of general importance or novel points of law. To that end, she prayed that the application be granted.

In response, the respondent strongly contested the application. He reminded this court that an appeal to the apex court required a point of law or a point of public importance for determination. He referred this court to the cases of **Rutagatina C.L. versus The Advocates Committee & Another,** Civil Application No 98 of 2010, CAT, Dar es Salaam (unreported) and **British Broadcasting Cooperation versus Eric Sikujua Ng'maryo,** Civil Application No 133 of 2004 (unreported).

The respondent submitted further that the ground raised by the Applicant does not disclose or show any point of law that deserves to be referred to the Court of Appeal of Tanzania. The respondent asserted that an application that does not disclose a point of law that needs determination by the Court of Appeal is destined for dismissal. To buttress his argument, the respondent cited the case of **Simon Kabaka Daniel v. Mwita Marwa Nyang'anyi & 11 Others** [1986] TLR 64.

Having dispassionately considered the rival submissions, I am inclined to decide on the crux of the matter in this appeal namely viability of leave to appeal to the Court of Appeal of Tanzania.

It is trite law in our jurisdiction that appeals to the Court of Appeal are restricted to those that contain a point of law (as opposed to mere facts) for determination. **Rutagatina C.L. versus The Advocates Committee & Another** (supra) The law requires the High Court to critically analyse such applications and be thoroughly satisfied that a point of law is involved. The case of **Dorina N. Mkumwa Vs. Edwin Davis Hamis** Civil Appeal No 53 of 2017 CAT, Mwanza (Unreported) is illustrative:

> *"Therefore, when High Court receives applications to certify a point of law, we expect Rulings showing the serious evaluation of the question whether what is proposed as a point of law is worth to be certified to the Court of Appeal. This court does not expect the certifying high court to act as an uncritical conduit to allow whatsoever the intending appeal proposes as a point of law to be perfunctorily forwarded to the Court as a point of law."*

The practice of this court as reasoned in **Harban Hajimosi and Another vs Omari Hilal Seif and Another** 2001] TLR 409 at page 412 allows me to either frame the points of law or adopt those framed by the intending appellant. I choose the later. The appellant has framed the proposed points as provided for in paragraph 6 of her affidavit, quoted bellow:

> *"6. That one of the facts raised was the need to call upon the court to determine the facts that both applicant and respondent are administrators of estate in respect of the same disputed land"*

Admittedly, distinguishing between a point of law and a point of fact is not an easy task. This is in spite of the fact that the Court of Appeal of Tanzania seized an opportunity in **Agnes Severini vs Musa Mdoe** [1989] TLR 164 to proffer guidance for certification of a point of law.

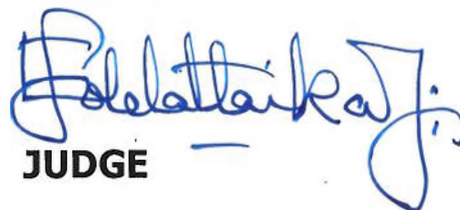
I am also persuaded by a persuasive Australian case of ***Collector of Customs v. Agfa-Gevaert Ltd*** (1996) 186 CLR 389, 394 in which the High Court of Australia distinguished between the *factum probandum* (the ultimate fact in issue) and *facta probantia* (the facts adduced to prove or disprove that ultimate fact.)

With all fairness, the applicant has not displayed any point of law for determination by the Apex Court. The assertion that the Court of Appeal is called upon to "determine the facts that both applicant and respondent are administrators of estate in respect of the same disputed land" is no point of law. To borrow from the Australian case of ***Collector of Customs*** **(supra)** these are *facta probantia.*

Premised on the above reasoning, this application is hereby dismissed for lack of merit. I make no orders as to costs.

It is so ordered

E. I. LALTAIKA



JUDGE

28.07.2022

Court

This ruling is delivered under my hand and the seal of this Court on this 28th Day of July 2022 in the presence of the applicant **BI SHALKE NARAYANI** and the Respondent **CLIFF JIWAN GODHU NARAAN** who have appeared in person and unrepresented.

E. I. LALTAIKA

JUDGE

28.07.2022