

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA SUB- REGISTRY)
AT MWANZA
MISCELLANEOUS LAND APPLICATION NO. 94 OF 2021**

(Arising from the Ruling of the High Court of Tanzania (Mwanza District Registry of Mwanza (Hon. Rumanyika, J) in Land Revision No. 04 of 2021 dated the 30th day of August, 2021)

**AUGUSTINE G. MPEMBA
(By his constituted attorney)1ST APPLICANT
GODLIGHT LATIA KIMARO.....2ND APPLICANT
VERSU
THE REGISTERED TRUSTEES
TANZANIA FIELD EVANGELISM.....RESPONDENT**

R U L I N G

23rd June & 2nd August, 2022

DYANSOBERA, J.:

The respondent successfully applied before this court for revision against consent judgment and decree issued by the District Land and Housing Tribunal for Mwanza at Mwanza in Land Application No. 11 of 2021.

The applicants, it would appear, were aggrieved by the ruling of this court and seeks to challenge it in the Court of Appeal of Tanzania hence this application for leave to appeal thereto.

The application has been made under section 47 (2) of the Land Dispute Courts Act [Cap. 216 R.E. 2019] and is supported by the joint

affidavit of the applicants. The application has been, however, resisted by the respondent by way of a counter affidavit.

Briefly, the background to this application is simply this. Before the District Land and Housing Tribunal, there was Land Application No. 11 of 2021 between the applicants but to the exclusion of the respondent. A consent judgment was entered by the Tribunal but the respondent who claimed to own a radio station styled 'Kwa Neema FM Radio' conducting its programs in the suit land thought that their rights were infringed as they were condemned unheard. For that reason they decided to come to this court in Land Case Revision No. 04 of 2021 seeking to have the said consent judgment revised. This court (Rumanyika, J as he then was) granted the application with costs and ordered the entire record to be remitted to the District Land and Housing Tribunal with immediate dispatch so that the respondent is impleaded and the matter is heard on merits but before another Chairperson competent to try it.

It is against this ruling and order that the applicants are seeking to appeal to the Court of Appeal upon leave of this court being granted. According to the applicant's joint affidavit, the applicants intend to appeal to the Court of Appeal of Tanzania on the following ground, that is: -

- i) That the High Court erred in law and fact to allow the land revision with costs without proof of evidence thereto.

At the time of hearing this application, the applicants were represented by Mr. Joseph Madukwa whereas the respondent was advocated for by Mr. I. Mushongi, both learned Counsel.

Supporting the application, learned Counsel for the applicants admitting that a cardinal principle is that in seeking leave, there has to be demonstrated a legal aspect. He submitted that at pp. 4 and 5 of the ruling of this court, the Hon. Judge directed himself on the ruling on Land Application No. 381 of 2019 between **Mailande Augustine Mpemba v. Pius Rwegasira and 2 others** whose ruling was delivered on 20th March, 2020 and which was disposing the preliminary objection and therefore, did not dispose of the case to its finality; meaning that the issue of who has an interest over the disputed premises that is Plot no. 385 Block Lan at Kiloleni A within Ilemela District, among others, who owned the radio station Kwa Neema FM Radio station. He argued that the proof of ownership entails production of evidence at a full trial. The contention of the Counsel for the applicants is that the Hon. Judge erred when he said that the respondent had interest without proof of that interest and this is the reason behind the applicants' endeavour to go to

the Court of Appeal. The applicants rely on the case of **National Bank of Commerce v. Maisha Moussa Uledi** (Life Business Centre), Civil Application No. 410/07 of 2019 at paragraph 2 of page 9 on the authority that where there is a legal point, leave should be granted. The other case relied on was **Nurbhai N. Rathnsi v. Ministry of Water Construction Energy Environment and Hussein Rajabali Hirji** [2005] TLR 220.

Resisting the application, Mr. Mushongi adopted his counter affidavit he filed in this court on 25th day of November, 2021. Conceding to the principles governing such applications as elucidated by the Court of Appeal in the case of **Charles S. Kimambo v. Clement Leonard Kusudya and another**, Civil Application No. 477/03 of 2018, learned Counsel pointed out that the issue for determination whether this application meets those principles. He submitted that this court clearly stated there was ownership of a radio station in the land dispute case and the case on that ownership was proceeding before the Court of a Resident Magistrate, Mwanza and the respondent was entitled to be heard before the Tribunal and that why he had filed his application for revision of the consent order in which her rights were not determined. Further that the respondent had an interest in the presence of Land Application No. 381 of 2019 where the respondent's officers had been

alleged to have trespassed the disputed land. It is the contention of Mr. Mushongi that in this application, the applicants seek leave to go to the Court of Appeal so that the Court ascertains if there was enough evidence showing that the respondent had an interest in the disputed land. According to Counsel for the respondent, the Court of Appeal cannot evaluate or analyse the evidence which was never given as there was no full trial involving the respondent. What was before this court in revision was the respondent's quest to be given an opportunity of being heard and the High Court granted him that opportunity and permitted the respondent to be involved in which case, the applicants would also be accorded an opportunity of being heard on how the respondent could prove her having interest in the disputed premises, Mr. Mushongi pressed.

In his short rejoinder, Mr. Madukwa maintained that the Judge legally erred when he said that the respondent has legal interest in Land Application No. 11 of 2021 before the District Land and Housing Tribunal.

Having considered the rival arguments of learned Advocates, I am inclined to agree to both parties that the main issue for consideration in this application is whether or not the decision sought to be appealed against raises legal points which are worth consideration by the Court of

Appeal. This is the principle stated by the Court of Appeal in the case of **National Bank of Commerce v. Maisha Mussa Uledi (Life Business Centre)** (supra), cited by learned Counsel for the applicants. In that case, the Court at p. 9 of the typed judgment posed the following question: -

'In an application for leave to appeal, what is required of the court hearing such application is to determine whether or not the decision sought to be appealed against raises legal points which are worth consideration by the Court of Appeal'.

In the impugned revisional proceedings of this court, this court found that the consent judgment in Land Application No. 11 of 2021 denied the respondent an opportunity of being heard he having claimed to have an interest in the disputed land over a radio station. This court ordered the respondent to be joined so that she was accorded an opportunity and the right of being heard on her alleged vested interests in the disputed land.

The applicants want to go to the Court of Appeal so that the Court determines *whether or not the High Court erred in law and fact to allow land revision with costs without proof of evidence thereto.*

Mr. Mushongi is of the view that this is not a legal point which is worth consideration by the Court of Appeal. With respect, I entirely agree. The applicants want the Court of Appeal to get involved into analysis of the evidence to ascertain if the respondent proved that she had interest in the disputed land. As the facts clearly show, the respondent had not given any evidence to prove the alleged interest in the disputed land. In the consent judgment she was impugning before this court in land revision, she was arguing that she was not involved. There is no evidence for which the Court of Appeal can be invited to analyze in order to ascertain if the respondent proved her interest in the disputed land.

The principles of granting leave to appeal to the Court of Appeal were well elaborated by the Court of Appeal of Tanzania in the case of **Charles S. Kimambo v. Clement Leonard Kusudya (as administrator of the Estate of Leonard Kusudya, Deceased) and the National Bank of Commerce**, Civil Application No. 477/03 of 2018 at pp. 7 & 8 of the typed judgment in the following terms:-

It is settled that leave to appeal is not granted automatically. In *British Broadcasting Corporation v. Erick Sikujua Ng'maryo*, Civil Application No. 138 of 2004 (unreported), it was held that: -

"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 a prima facie or arguable appeal" in matters of public importance and serious issues of misdirection or non-direction likely to result in a failure of justice."

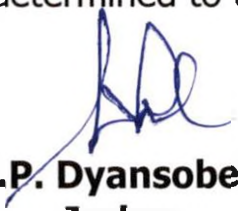
Earlier in **Harban Haji Moshia and Another v. Omari Hilal Seif and Another** [2001] TLR 409, the Court had emphasized, at page 414ds and 415, thus:-

Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceedings as a whole reveals such disturbing features as to require the guidance of the Court of Appeal. The purpose of the provision is, therefore, to spare the court the spectra of unmeriting matters and to enable it give adequate attention to the cases of true public importance"

Having so said, I find that the point raised by the applicants is not worthy taking to the Court of Appeal. Grant of leave to appeal to the Court of Appeal is refused and the application is dismissed with costs.


Parties should comply with the order of this court dated 30th day of August, 2021 so as to avert prolonging litigation and at the same time to have the contentious issues determined to their finality.

Order accordingly.



W.P. Dyansobera
Judge
2.8.2022

This ruling is delivered under my hand and the seal of this Court on this 2nd day of August, 2022 in the presence of Mr. Inhard Mushongi, learned Counsel for the respondent and holding brief for Mr. Joseph Madukwa, learned Advocate for the applicants.



W.P. Dyansobera
Judge