IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

Misc. LAND APPLICATION No. 81 OF 2021

(Arising from the High Court (Musoma District Registry) in Land Appeal No. 3 of 2021 & originating from the District Land of Housing Tribunal for Mara at Musoma in Misc. Land Application No. 16 of 2020)

DOTTO GAVANA ..... **APPLICANT**

Versus

TABITHA KOMBOKA ..... **RESPONDENT**

EX-PARTE RULING

28.03.2022 & 01.04.2022

Mtulya, F.H., J.:

Doto Gavana (the Applicant) being aggrieved by the decision of this court in **Land Appeal No. 3 of 2021** (the appeal) preferred the present application for leave to appeal to the Court of Appeal of Tanzania (the Court) to dispute the appeal at the final court in judicial hierarchy in our State. The application was preffered under section 47 (2) of the **Land Disputes Courts Act** [Cap. 216 R.E 2019] (the Act), which 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.* This section is supported by the enactment in section 5 (2) (c) of the **Appellate Jurisdiction Act** [Cap. 141 [R.E.2002] (the Interpretation Act). The two provisions require applicants who wish to apply for leave to appeal to the Court to register relevant materials

which will display point (s) that may persuade this court to decide in favor of the application. It is fortunate the cited provisions of the law have already receive judicial interpretations and there is a large family of precedents on the subject of leave to access the Court (see: **Nelimanase Foya v. Mamian Mlinga**, *Misc. Appeal No. 19 o f 1999;* **Gaudencia Mzungu v IDM Mzumbe**, Civil Application No. 94 of 1994; **Grupp v. Jangwani Sea Breeze Lodge Ltd**, Commercial Case 5 No. 93 of 2002; **Garende Nyabange v. Nyanzara Nyabange**, Misc. Civil Application No. 34 of 2021).

In early years of 2000s, Honourable Massati, J., (as he then was) sitting in this court for consideration of leave to access the Court in the precedent in **Grupp v. Jangwani Sea Breeze Lodge Ltd** (supra) expressed his opinion in the following words:

> *I have no jurisdiction to go into merits or deficiencies of the judgment or orders of my sister Judge in this application. All that I am required to determine is whether there are arguable issues fit for the consideration of the Court of Appeal.*

Twenty (20) years in the course, specifically on 2nd March 2022, this court sitting in Musoma determined an application for leave to prefer an appeal to the Court, in the precedent of **Garende Nyabange v. Nyanzara Nyabange** (supra). After several unanswered issues brought by the applicant in the application, this court stated that:

The only role of this court is just to check whether there is any point which may invite an interpretation of the Court of Appeal. In the present application, there are three complaints on point of law which cannot be resolved in this court. The practice in applications, like the present one, shows that disputes of this nature may be granted leave to access the court of record, the Court of Appeal, to put the record of courts proper.

In the present application, the applicant in seventh paragraph of her affidavit and during submission of her points in this court on 28th March 2022, when the application was scheduled for hearing, she complained several issues, which this court did not consider in the appeal, including: the right to be heard, *res judicata*, illegality in *ex-pate* orders and reliance on procedural technicalities. It was unfortunate the respondent declined appearance to reply the raised issues despite proof of service.

In the circumstances of this application and noting the raised issues cannot be resolved in this court, I am moved to think that the only issue which is for determination before this court is: *whether the applicant has advanced clear points of law to warrant leave to appeal to the Court*. After consideration of all relevant materials registered in the present application, and noting some of them go to the root of the matter and proper application of the law, I think I have to reply the issue in affirmative. In my considered opinion, the applicant has

registered clear points to warrant this court to decide in favor of the application and hereby grant leave to the applicant to appeal to the Court in accordance to laws regulating appeals from this court to the Court. I have decided to grant the present application without any order as to costs. The reason is obvious that the respondent had declined to appear in protest of the application.

Ordered accordingly.

F. H. Mtulya

Judge

01.04.2022

This Ruling was delivered in Chambers under the seal of this court in the presence of the applicant, Dotto Gavana through teleconference.

F.H. Mtulya

Judge

01.04.2022