

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 31 OF 2020**

*(Arising out of the decision of this Honourable Court in Misc. Land Application No. 85 of 2018 made by Hon. Kulita, J. on the 18<sup>th</sup> day of June, 2020)*

**WALHADI NGOLI ..... 1<sup>ST</sup> APPLICANT**

**PERIOD NGOI ..... 2<sup>ND</sup> APPLICANT**

**PRISCUS NGOI ..... 3<sup>RD</sup> APPLICANT**

**VERSUS**

**AIDA ADAMSONI KALINGA.....RESPONENT**

*Date of last Order: 23/02/2022*

*Date of Ruling: 30/06/2022*

**RULING**

**MGONYA, J.**

This is an Application for leave to Appeal to the Court of Appeal made under **Section 47 (2) of the Land Disputes Courts Act, Cap. 2006** and **section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 [R. E. 2019]** and **Rule 45 (a) of the Tanzania Court of Appeal Rules, [R. E. 2019]**.

In this application, the Applicants herein were aggrieved with the decision of the District Land and Housing Tribunal in **Application No. 68 of 2016** which was decided in favour of the

Respondent herein. After sometime, Applicants had filed an Application for extension of time to file an appeal out of time against the Judgement and Decree of the District Land and Housing Tribunal, of which was dismissed by this Court.

The Applicants' Chamber Summons is supported by their affidavit; the Respondent also had filed a Counter Affidavit in reply. However, both parties in this Application appeared in person.

In support of this application, Applicants submitted that the court has discretion to grant the application for leave upon the aggrieved party to meet the statutory requirements which are first lodging a notice of appeal and filing this application for leave timely.

Further, Applicants submitted that under paragraph **6** in their affidavit demonstrating to the effect that, the said leave is required for appealing against the ruling and order given by the High Court in its appellate jurisdiction, considering the Respondent have not shown to what extent she will be prejudiced in case leave to appeal is granted to the Applicants.

Lastly, it is the Applicants' humble prayer that their application for leave be granted as the decision which is intended to be appealed against stand overwhelming chances of success in case Applicants are allowed to appeal to the Court

of Appeal on reasons that they had sufficient reasons to apply for extension of time as the Tribunal contributed much for them to delay to appeal on time.

In submitting against, the Respondent avers that in order to ascertain whether to grant leave or not it is important to consider that the leave to appeal is not automatic. It is within the discretion of the court to grant or refuse leave. It is the Respondent's view that Applicants were supposed to raise grounds of appeal which are either of general importance or novel point of law. It is trite law that, in order for the Application for leave to appeal to be granted the High Court should consider if there is special circumstances or a very controversial legal issue or contradiction of sections of laws. Further, the Respondent referred the court not to consider the grounds which set forth in the Applicants' affidavit, as the same did not have any arguable grounds meriting an appeal, hence there is no sufficient cause for warranting this application for leave to appeal to the Court of Appeal.

In the rejoinder, Applicants reiterated what they had submitted in chief that, they had sufficient reasons for being late to file their appeal within time on the reasons that they were given Judgement and Decree of the District Land and Housing Tribunal

after 5 months. Hence, was the sufficient reasons warranting the intervention of Court of Appeal.

I have carefully read the averment in the affidavit in support of the Application and at the same time went through the submission of parties. In examining the merit of this application, I agree with the Respondent that in such an application, the court is vested with discretionary powers to allow or refuse the same. The law is well settled that an application seeking for leave is not automatic, in other words, a party seeking the same must convince the court among other things that, there is a novel point of law which needs to be determined by the Court of Appeal. This position was amplified in ***BRITISH BROADCASTING CORPORATION VERSUS ERIC SIKUJUA NG'MARYO, Civil Application No. 133 of 2004 (Unreported)*** where it was stated, and I quote;

***"Needless to say, leave to appeal is not an automatic. It is with the discretionary of the court to grant or refuse. The discretion must, however be judiciously exercised on the materials before the court. Leave to appeal will be granted where grounds of appeal raise of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal. (See***

*Buckle Versus Holmes (1926) ALL ER Rep. 90 at page 91).  
However, where the grounds of appeal are frivolous, vexatious  
or useless or hypothetical, no leave will be granted".  
[Emphasis is mine]*

Having in mind the above legal position and upon my objective consideration of the submissions from both parties, I find that there is no point of law demonstrated by the Applicants and which need to be determined by the Court of Appeal. The reason being specifically as per paragraph **6** of Applicants' affidavit, they don't still have sufficient cause as they didn't account to each day of delay.

**I therefore dismiss the Application on leave to appeal to the Court of Appeal for lack of merits** as the same has been misconceived.

The Respondent to have her costs.

It is so ordered.



**L. E. MGONYA**

**JUDGE**

**30/06/2022**

**Court:**

Ruling delivered in chambers in the presence of the Applicants, in the absence for the Respondent and Mr. Richard RMA, in this 30<sup>th</sup> day of June, 2022.



A handwritten signature in blue ink, appearing to read "L. E. Mgonya", is written over the printed name.

**L. E. MGONYA**

**JUDGE**

**30/6/2022**