

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

MISC. LAND APPLICATION NO. 34 OF 2021

*(Arising from Land Appeal No. 24 of 2018 of the Shinyanga High Court
decision dated 28th April 2020)*

REVOCATUS KENEDY NTANDUKE.....APPLICANT

VERSUS

1. NATIONAL MICROFINANCE BANK PLC

2. DOLPHINE GENERAL BUSINESS

ENTERPRISES CO LTD.....

RESPONDENTS

RULING

7th June & 15th July 2022

MKWIZU, J.:

The applicant has filed this application seeking leave to appeal to the Court of Appeal under section 47 of the Land Disputes Court Act, (Cap 216 RE 2019), Section 5(1) (c) of the Appellate jurisdiction Act, Rule 45(a) and 47 of the Court of Appeal Rules 2009. It is supported by an affidavit sworn by the applicant on 20th July 2021. Mr. Mackanjero Ishengoma advocate for the respondent through a counter-affidavit and opposed the prayer.

The applicant was present in court in person during the hearing and he personally argued the application while Mr. Mackanjero Ishengoma advocated for the respondents. Applicants' submissions are brief. He only urged the court to consider his application without more.

On the other hand, Mr. Ishengoma first adopted his counter-affidavit with additional submissions that the applicant has failed to show points of law/issues eligible for the Court of Appeal's determination. He contended that paragraphs 6 (i) and (ii) of the applicant's affidavit itemize two issues determined by the DLHT and not from the High Court's decision, thus raising grounds of appeal to the Court of Appeal directly from the DLHT. He lastly prayed for the dismissal of the application with costs.

In an application for leave to appeal, the court's duty is to assess whether the decision sought to be appealed against raises legal points which are worth consideration by the Court of Appeal. See for instance **Mariamula Mula Letifhussein & 2 Others v. Mohamed Hatibu Mbwana**, Civil Application No 5 of 2014.

According to his affidavit in support of the application, the applicant intends to challenge the decision of the High Court on the following issues:

- (i) Whether it was proper for the trial tribunal to dismiss prayers for setting aside *ex-parte* orders on the ground that there is no sufficient cause to extend the time
- (ii) Whether I was afforded the right to be heard in the trial tribunal

I have consciously considered the points raised in the affidavit and the impugned decision. As rightly submitted by the respondent's counsel, the issues pointed out by the applicant are not engendered by the impugned decision. Before this court was an appeal by the applicant against the DLHT's decision refusing an application to set aside the dismissal order. His appeal was predicated on failure by the tribunal to consider his

grounds of absence when the matter was fixed for hearing. The appeal was in the end dismissed for failure by the applicant to justify his reasons for absence. This is the decision that the applicant is appealing against as indicated in his Notice of appeal to the Court of Appeal dated 12th August 2021.

Thus, issues for the Court of Appeal's decision were to be sketched from that background. The applicant was expected to point out from the impugned decision, issues sufficing for the court of Appeals' consideration. Contrary to that, an applicant's leave application is pegged on points not subject to the decision he is himself appealing against. The first point, for instance, tests the refusal by the trial tribunal to set aside ***ex-parte orders for lack of sufficient reason to enlarge time***. This issue was never brought for this court's determination in Land Appeal No 24 of 2018. The second issue is in relation to the denial by the tribunal of a right to be heard. This again is a new issue forming no part of the impugned decision.

I generally, do not find the point worth consideration by the Court of Appeal. The application lacks merit. It is thus dismissed with costs.



DATED at Shinyanga this 15th Day of **JULY** 2022.


E.Y. MKWIZU
JUDGE
15/7/2022