

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)**

AT ARUSHA

MISC. CIVIL APPLICATION NO.87 OF 2020

(C/F Civil Appeal No. 22 of 2017 in the High Court of the United Republic of Tanzania
at Arusha, Originating from Civil Case No. 21 of 2016 in the Resident Magistrates'
Court of Arusha at Arusha)

CATHERINE LOSIOKI TELELE..... APPLICANT

VERSUS

NGORONGORO PASTORAL COUNCIL..... 1ST RESPONDENT

ENDULEN WARD COUNCILOR.....2ND RESPONDENT

NDANIN NGIMA MANI.....3RD RESPONDENT

RULING

22/2/2022 & 30/8/2022

ROBERT, J:

Before me is an application for leave to appeal to the Court of Appeal of Tanzania against the decision of this Court in Civil Appeal No. 22 of 2017 delivered on 29th March, 2019.

The application has been preferred under 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, 2009 as amended by Rule 6 of the

Tanzania Court of Appeal (Amendment) Rules, 2017. The application is supported by an affidavit sworn by Catherine Losioki Telele, the applicant herein, and it sets out grounds upon which the application is based.

Facts constituting the basis of this application as gathered from the affidavit supporting this application reveals that, the applicant successfully lodged a civil suit in 2016 against the respondents at the Resident Magistrates Court of Arusha which was registered as Civil Case No. 21 of 2016. Aggrieved, the respondents successfully appealed to the High Court which quashed the holding of the trial. Dissatisfied, the applicant is now determined to challenge the decision of this Court by way of appeal at the Court of Appeal of Tanzania. Hence, he filed this application seeking leave to appeal to the Court of Appeal of Tanzania.

At the hearing of this application, the Court ordered parties to proceed with the hearing by way of written submissions as requested by parties.

Highlighting on the application, Mr. George Yonazi Mnzava, the learned counsel for the applicant, submitted that there is a serious issue of illegality in the impugned decision of this Court which has to be taken care of by the Court of Appeal. Thus, for the applicant to address these issues, she has to be given leave to appeal to the Court of Appeal. He

submitted further that, if left unattended the said irregularities will create a bad precedent.

He explained that the impugned decision was based on the issue of place of suing whereby this Court considered that the District Court of Ngorongoro is closer to the respondent compared to the Resident Magistrate Court of Arusha where the applicant instituted his case, the issue which was neither submitted by either of the parties to the case and did not form part of the grounds of appeal filed by the respondents at the High Court. He made reference to the fact that this Court directed itself at page 5, paragraph 2 of the impugned judgment that there is hardly 200kms from the city of Arusha to the town of Ngorongoro the fact which was not stated by any of the parties to the case.

According to him, the only reason considered in the impugned judgment of this court is the issue of convenience. He insisted that the applicant was not given an opportunity to be heard based on that narration. Hence, the decision was arrived at based on illegality and irregularity which cannot be ignored. To support his argument, he cited various decisions of the Court of Appeal as follows; ***John Tilito Kisoka vs Aloyce Abdul- Minja***, Civil Appeal No. 3 of 2008, ***Omary Ally Nyamalege & Others vs Mwanza Engineering Works***, Civil Application No. 94 of 2017 and ***Tropical Air (TZ) Limited vs Godson***

Eliona Moshi, Civil Application No.9 of 2007 (All unreported). Based on the submissions, he prayed for the application to be allowed.

In rebuttal submissions, Mr. Ipanga Kimaay, the learned counsel for the respondents submitting on the issue of place of suing, argued that, the learned judge considered Section 18 of the Civil Procedure Code (Supra) to be decisive and as the issue was raised as an objection at the trial court, according to section 19 of the CPC, it was right for the appellate court to quash the trial proceedings and set aside the decision of the trial Resident Magistrates Court. He further contended that the matter is overtaken by events since the election was conducted in January, 2021, the application should be refused because the grounds of appeal are frivolous. He added that if the application will be allowed and the applicant succeeds in the intended appeal, the resultant effect is that the appeal shall be re-heard based on the rest of the grounds which were not determined or to be heard *de-novo* which shall be hypothetical or an academic exercise which, according to him, is against the duty of this court. He supported his argument with the decisions in the case of **British Broadcasting Cooperation vs Eric Sikujua Ng'maryo**, Civil Application No. 1138 of 2004 CAT, **Pop Vried (Tanganyika) Limited vs Melembuki Kitesho Mollel**, Misc. Civil Application (HC) at Arusha. He prayed for the application be dismissed.

In a brief rejoinder, the learned counsel for the applicant reiterated the arguments in his submissions in chief. With regards to the issue that the intended appeal has been overtaken by events, he maintained that if the impugned decision of the Court of Appeal will be left unattended it will leave a bad precedent. He insisted that the applicant does not intend to challenge the election which is considered to be an issue overtaken by events. On the cases cited by the respondents, he was of the view that they are distinguishable as the intended appeal contains issues of general importance which, for the interest of the parties and the community at large, should be considered by the Court of Appeal. He also made reference to the fact that, when Hon. Gwae J, was granting enlargement of time to file this instant application he considered that there is a legal issue to be addressed by the Court of Appeal. In the end he prayed for the application to be granted.

Having gone through the rival submissions made by both parties, I will now proceed to determine the merit of this application. In order to move this Court successfully for leave to appeal to the Court of Appeal, the applicant is required to demonstrate that the intended appeal raises issues of general importance or novel points of law or an arguable appeal (See **Rutagatina C.L. v. The Advocates Committee & Another**, CAT-Civil Application No. 98 of 2010, **Abubakari Ally Himid v. Edward**

Nyalusye, CAT-Civil Application No. 51 of 2007; and **British Broadcasting Corporation (BBC) v. Eric Sikujua Ng'maryo**, CAT-Civil Application No. 138 of 2004). In all these decisions the emphasis given is to the effect that grant of leave to appeal must be on satisfaction that the intended appeal raises a novel point of law or there is a prima facie or arguable appeal which warrants the attention of the Court of Appeal.

However, the Court enjoys the discretionary powers to refuse to grant leave where it is of the view that the application falls short of meeting the obligatory threshold for its grant. See: **Nurbhain Rattansi v. Ministry of Water Construction Energy Land and Environment and Another** Civil Application No. 3 of 2004 TLR [2005] 220.

Coming to the instant application, the applicant avers that the judgment sought to be challenged is tainted with irregularities on the face of record. He points out that the decision of this Court was based on the issue of place of suing where the presiding Judge held that Ngorongoro District Court is closer to the defendants than Arusha Resident Magistrate Court hence the suit was supposed to be instituted at the District Court of Ngorongoro and not the Resident Magistrates' Court. On the other hand, the respondents are of the view that this matter has been overtaken by

events since the election which is the subject matter of this appeal was conducted in January, 2021.

This Court is aware that, at this stage its role is limited to making a determination on whether there are arguable points worthy of determination by the Court of Appeal and not otherwise. Based on the submissions of parties and records of this matter, this Court is in agreement with the learned counsel for the applicant that the issue of jurisdiction which forms the basis of determination in the decision of this Court is indeed arguable and requires an imposing interpretation by the Court of Appeal given that this Court having remarked in the impugned decision that section 18 of the Civil Procedure Code does not in itself confer or oust jurisdiction of the Court proceeded to fault and set aside the judgment of the trial Magistrate for failure to exercise her jurisdiction by striking out the suit or transferring it to the District Court. There is also an argument that the applicant was not heard on the issue that the District Court is closer to the respondents than the District Court which can be determined by the Higher Court.

From the foregoing arguments, I am of the firm view that this application meets the legal threshold for its grant. Consequently, I grant

leave for the applicant to appeal to the Court of Appeal. I give no order for costs.

It is so ordered.



A handwritten signature in blue ink, appearing to read "K.N. Robert".

K.N.ROBERT
JUDGE
30/8/2022