

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TANGA DISTRICT REGISTRY)

AT TANGA

MISC. LAND APPLICATION NO. 12 OF 2021

MOA PLANTATIONS & ACQUACULTURE.....APPLICANT

-VERSUS-

REGISTRAR OF TITLES MINISTRY OF LANDS, HOUSING &

HUMAN SETTLEMENTS DEVELOPMENT.....1st RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....2nd RESPONDENT

RULING

Date of Last Order: 22/03/2022

Date of Ruling: 06/04/2022

AGATHO, J.:

The applicant filed an application for leave to appeal to the Court of Appeal of Tanzania against the decision in Land Appeal No. 14 of 2019. In his application the Applicant is praying that the Court be pleased to grant leave to appeal to the Court of Appeal of Tanzania. He also prays that the costs be in the cause and other reliefs that the Court deems fit to grant.

While the Applicant was represented by Dr Chacha Bhoke Murungu, the Respondents were represented by Rashid Mohamed, State

Attorney. The application was heard on 06/04/2022 where both parties made their oral submissions on the application.

Dr Murungu submitted that the service of summons was effected on 24/03/2022 and Counter Affidavit was not filed. He prayed to the Court that he would like to adopt the chamber summons and affidavit with regards to prayers prayed for. He went on submitting that since they have filed notice of appeal annexed on the affidavit in paragraph 4 of the said affidavit, he will direct himself to that paragraph. He argued that the said paragraph presents triable issues that will be argued on appeal.

He submitted further that there was illegality in the judgment which they intend to appeal against. He said after the hearing of the Preliminary Objection (PO) the Court wrote judgment and decree instead of a ruling and drawn orders. He was of the view that this was against guidance given by the Court of Appeal in **Amina Karim Jetha v Wakf and Trust Property Commission (as administrator of the estate of the late Ali Salim Ali) Civil Appeal No. 177 of 2017 the Court of Appeal of Tanzania at Zanzibar**. The term judgment and ruling cannot be used

interchangeably because the consequences of judgment are different from those of the ruling.

He then turned to the second point, there was no notice of intended rectification when the Registrar of Titles was rectifying the Land Register and thereby replacing the name of the Applicant with His Excellence the President of the United Republic of Tanzania. Consequent to that there is another triable issue as to whether the 1st Respondent had an obligation to communicate his reasons or to inform the Applicant about his decision and reasons for that decision. These are related to rules of natural justice. They are found on paragraphs 6 and 7 of the affidavit.

Dr Murungu submitted that in exercising its discretion to grant leave to appeal to the Court of Appeal, the High Court has to be satisfied with two conditions:

- (1) Whether the Applicant has filed notice of appeal and served upon the parties concerned.
- (2) Whether there are reasonable grounds or whether the intended appeal raises triable issues for the attention of the Court of Appeal.

He submitted that the above legal points have been averred in paragraph 6 of the affidavit. In support of his submissions, he cited the Court of Appeal decision in **British Broadcasting Corporation v Erick Sikujua Ngimaryo, Civil Application No. 138 of 2004 Court of Appeal** at pages 7-8. He closed his submission with a prayer that the leave sought be granted so that the Court of Appeal address the controversy.

In support of the foregoing submissions by Dr Murungu counsel for the Applicant was the submissions by Rashid Mohamed, the Respondents' State Attorney. He was brief that they do not intend to object the application. Understandably he did not file Counter Affidavit. Mr Mohamed was of the view that the Court should vacate its order regarding the date fixed for hearing. He opined that the hearing was fixed on 07/04/2022 which was Karume day. Hence, they came a day prior to that date. They thus came before the Court today, 06/04/2022. I do not see this as a hurdle provided there was mutual consensus of the parties.

I have the submissions of the parties' learned counsel. On his side the Applicant's advocate raised pertinent legal issues that are

worth to be examined by the Court of Appeal. I have also noticed that the Applicant has filed his Notice of Appeal and that the parties have been served upon. When it comes to exercising discretion to grant or refuse leave to appeal to the Court of Appeal, this Court has to be satisfied that the Notice of Appeal has been filed and served upon the parties. Moreover, that the intended appeal raised legal issues that are worth to be examined by the Court of Appeal.

The issue of naming a ruling a judgment is not merely a procedural matter. It is a substantive issue as rightly ruled by the Court of Appeal in **Amina Karim Jetha v Wakf and Trust Property Commission (as administrator of the estate of the later Ali Salim Ali) Civil Appeal No. 177 of 2017 the Court of Appeal of Tanzania at Zanzibar** because the consequences are different. Further to that the Registrar of Titles may have breached the rules of natural justice as submitted by the Applicant's counsel. For the aforesaid reasons, I am satisfied that there are triable legal issues worth to be determined by the Court of Appeal.

To conclude therefore, the Court varied its order given on 22/03/2022 that the matter will come for hearing on 07/04/2022 as that will be Karume's day, which a public holiday. Instead, and by mutual consensus of the parties the matter is heard today. Moreover, speedy disposal of cases is equally appreciated in our legal system.

The Court also orders that the application for leave to appeal to the Court of Appeal is granted for the reasons stated herein above. The Applicant is given 14 days from today to file his appeal.

No order for costs is given.

DATED at TANGA this 6th Day of April 2022.



**U. J. AGATHO
JUDGE
06/04/2022**

Date: 06/04/2022

Coram: Hon. Agatho, J

Applicant: Dr. Chacha Bhoke Murungu Advocate for

Respondent: Rashid Mohamed, State Attorney

B/C: Zayumba

JA: Ms. Husna Mwiula

Court: Ruling delivered on this 6th day of April, 2022 in absence of Applicant, and but in the presence of Rashid Mohamed, Respondent's State Attorney.



U. J. AGATHO
JUDGE
06/04/2022

Court: Right of Appeal fully explained.



U. J. AGATHO
JUDGE
06/04/2022