

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF BUKOBA  
AT BUKOBA**

**LAND APPLICATION NO. 59 OF 2022**

*(Originating from the District Land and Housing Tribunal at Bukoba in Application No. 82 of 2020 and arising from Land Appeal No. 63 of 2021 of the High Court at Bukoba)*

**SAMWEL RETEBAN.....APPLICANT**

***VERSUS***

**RESPICIOUS BABIRIGI.....1<sup>ST</sup> RESPONDENT**

**MUKAKURAS KATARAIYA.....2<sup>ND</sup> RESPONDENT**

**LUTTA DIOCLES.....3<sup>RD</sup> RESPONDENT**

**RULING**

*22<sup>nd</sup> August & 22<sup>nd</sup> August 2022*

***Kilekamajenga, J.***

The appellant filed a suit against the respondents in the District Land and Housing Tribunal seeking a declaration that the sale of the disputed land to the respondents was null and void for lack of consent from clan members of the Abaganga clan. In that case, the applicant sued as the head of the Abaganga clan. In response, the respondents resisted the case and raised a point of objection to question the applicant's *locus standi* of suing as the head of the clan. On 24<sup>th</sup> of April 2021, the trial tribunal scheduled the point of objection to be disposed of by way of written submissions. The order to dispose of the point of objection was issued in the presence of the applicant and his counsel, Mr. Mathias Rweyemamu. On 08<sup>th</sup> June 2021, when the case came for mention, Mr. Rweyemamu for the applicant informed the tribunal that he was ready for hearing of the point of objection. However, the tribunal reminded the counsel



that he was supposed to file the written submission but failed to do so. Thereafter, the trial tribunal delivered an *exparte* ruling as the counsel for the applicant failed to comply with the order of the tribunal. The tribunal sustained the point of objection and dismissed the case for the reason that the applicant, being a mere head of the clan, had no *locus standi* to sue the respondents.

The applicant was not happy with the decision of the trial tribunal hence appealed to this court. This court was of the view that, the appeal was prematurely filed because the applicant had not exhausted other remedies before filing the instant appeal. The applicant ought to set aside the *exparte* ruling before coming to this court. Now, the applicant wishes to approach the Court of Appeal of Tanzania to challenge the decision of this Court. He has therefore, filed the instant application seeking leave to approach the Honourable Court of Appeal of Tanzania.

The hearing of the instant application brought the attendance of the counsel for the applicant, Mr. Mathias Rweyemamu and the learned advocate, Mr. Danstan Mujaki for the respondents. However, all the parties were absent. Mr. Rweyemamu argued that, the applicant was condemned unheard and this court erred in deciding that the appeal was pre-maturely filed because the applicant had no other option rather than appealing to this court. He supported his argument with the case of ***Dangote Industries LTD Tanzania v. Warnercom (T) Ltd, Civil Appeal No. 13 of 2021***, CAT at Dar es salaam (unreported).

On the other hand, Mr. Mujaki for the respondents objected the application arguing that, the applicant was supposed to set aside the ex-parte decision before approaching this Court. He emphasised his argument with the case of ***Godfrey Kimbe v. Peter Ngonyani, Civil Appeal No. 41 of 2014***, CAT at Dar es salaam (unreported). The counsel further insisted that, the applicant and his counsel were negligent for not filing the written submission in the trial tribunal. He referred to the case of **Dangote Industries** (*supra*) to emphasise that, the applicant was supposed to seek an order to set aside the exparte decision before coming to this court.

The rejoinder submission by Mr. Rweyemamu did not raise any point worth of consideration.

The law on application for leave to appeal to the Court of Appeal of Tanzania is already settled. Leave to appeal is not an automatic right but it is the discretion exercised by this court upon the applicant indicating that there is a point of law to engage the Honourable Court of Appeal. Also, the applicant must show that, the case involves a point which its determination may benefit the public or where there are disturbing features which call for the intervention of the court of the highest level. In the case of **Harban Haji Mosi and Another v. Omar Hilal Seif and Another, Civil Reference No. 19 of 1997** (unreported), the Court stated that:

*Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceedings as a whole reveal such disturbing features as to require the guidance of the Court of Appeal. The purpose of the provision is therefore to spare the Court the spectre of unmeriting matters and to enable it to give adequate attention to cases of true public importance.*

Also, in the case of **British Broadcasting Corporation v. Eric Sikujua Ng'maryo, Civil Application No. 133 of 2004** (unreported), which was quoted with approval in the case of **Rutagatina** (*supra*), the Court of Appeal emphasized that:

*'Needles to say, leave to appeal is not automatic. It is within the discretion of the Court to grant or refuse leave. The discretion must, however be judiciously exercised on the materials before the court. As a matter of general principle, leave to appeal will be granted where the grounds of appeal raise issues of general importance or novel points of law or where the grounds show a prima facie or arguable appeal.'*

In the case of **Rutagatina C.L. v. The Advocates Committee and Clavery Mtindo Ngalapa, Civil Application No. 98 of 2010**, the Court of Appeal of Tanzania set the grounds to approach it thus:

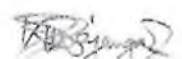
*An application for leave is usually granted if there is good reason, normally on a point of law or on a point of public importance, that calls for this Court's intervention.*

The Court of Appeal of Tanzania is the court of highest level in our judicial hierarchy; therefore, it should only be moved to intervene on matters which, in the real sense, have advantages to the parties and the public at large. Any matter reaching the Court of Appeal of Tanzania should be meritorious and its determination may contribute to the legal jurisprudence of the country. A party should not be allowed to approach the Court of Appeal of Tanzania for any trivial matter because it is not the court to test a case. There is no good reason to allow a party to approach the Court of Appeal for a case which, even if justice is granted, an applicant will earn nothing rather than a wastage of time and resources both to the parties and the court. In the instant application, the applicant wishes to approach the Court of Appeal to fault the decision of this Court. I have considered the application and find that, it does not fit into the qualities stated above. In this application, there is no point of law involved nor any thing of public importance to involve the Court of Appeal of Tanzania. The application is devoid of merit and I hereby dismiss it with costs.

Dated at Bukoba this 22<sup>nd</sup> Day of August 2022.



  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**22/08/2022**



**Court:**

Ruling delivered this 22<sup>nd</sup> August 2022 in the presence of the counsel for the respondent but in the absence of the applicant and his counsel. Right of appeal explained.



  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**22/08/2022**

