

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOB DISTRICT REGISTRY

AT BUKOBA

MISCELLANEOUS LAND APPLICATION NO. 42 OF 2022

(Arising from Land Case Appeal No. 22 of 2020 in the High Court of Tanzania at Bukoba and Originating from Application No. 27 of 2010 in Bukoba District Land and Housing Tribunal)

FELIX MUGASHA NGONDO.....APPLICANT

VERSUS

ALEXANDER MABIRA.....1ST RESPONDENT

KASIA HAMADA.....2ND RESPONDENT

RULING

Date of Last Order: 09/09/2022

Date of Ruling: 16/09/2022

A.E. Mwipopo, J.

This application originates from the District Land and Housing Tribunal for Kagera at Bukoba (DLHT) in Application No. 27 of 2010 where the applicant namely Felix Mugasha Ngodo sued the respondents namely Alexander Mabira and Kasia Hamada for encroaching into a suit land located at Nyamkera Village within Mwamaga Ward in Misenyi District. The said suit was heard in exparte and the DLHT delivered its exparte judgment in favour of the applicant.

The respondents were aggrieved with the decision of DLHT and filed Land Case Appeal No. 22 of 2021 in this Court. The High Court did find that the proceedings before the trial DLHT was not proper for failure to afford the assessors

with opportunity to give their opinion and for failure to record the assessors' opinion. That assessors' did not actively participated in determination of the case. The Court quashed and set aside the whole proceedings, judgment and order of the trial DLHT and ordered that the interested party may institute a fresh suit before competent Tribunal. The applicant was aggrieved by the decision of this Court and he filed the present application for leave to appeal to the Court of Appeal.

The application was instituted by Chamber Summons supported by applicant's affidavit. The respondents contested the application through their joint counter affidavit.

On the hearing date both parties were present in person and they have legal representation. The applicant was represented by Mr. Mathias Rweyemamu, advocate, whereas, the respondents were represented by Ms. Theresia Bujiku, advocate. The Court invited both parties to address the Court on the application.

The counsel for the applicant in his submission said that the applicant has already filed notice of appeal and has applied for the copy of proceedings to the Deputy Registrar within time. He said that the grounds for the intended appeal to the Court of Appeal is the ground of illegality as found in paragraph 3, 4, 5 of the affidavit. It was his submission that the said illegality is that the High Court suo motto raised the issue of jurisdiction and proceeded to determine it without affording parties opportunity to address the court. The High Court went ~~quash~~ on

quash
to the proceedings and set aside the decision of the trial Tribunal and ordered any interested party to institute a fresh suit to the competent tribunal, instead of ordering the case to start afresh before the tribunal as the pleadings were properly filed and there is no defects in the pleadings. If the parties were afforded opportunity to address the court, they would have requested the court to order the matter be tried denovo since the order to institute the matter afresh affects the applicant, a fresh application will be subjected to the law of limitation as it will be filed after 12 years has already passed.

The counsel for the respondent did not oppose the application since the applicant agree that there was irregularity in the trial Tribunal proceedings. She admitted that parties were not afforded right to address the court on irregularity and the order issued by this court was not proper in the circumstances of this case. As there is clear irregularity in the proceedings of the trial District Land and Housing Tribunal, the proper order was for the court to order the trial to start afresh in the Tribunal before another Chairman and new set of assessors as the matter will be limited by the time limitation provided by the law of Limitation Act if it is going to start afresh. The only option to give chance the parties to be adjudicated by District Land and Housing Tribunal. This was the end of submission from both parties.

It is a settled law that this Court has discretion to grant or refuse application for leave to appeal to the Court of Appeal. The leave is granted where the applicant

has provided a good reason. In the case of **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo**, Civil Application No. 138 of 2004, Court of Appeal of Tanzania at Dar Es Salaam, (unreported), it was held that leave to appeal will be granted where the grounds of appeal raise issues of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal.

Normally Leave will not be granted where the grounds of appeal are frivolous, vexatious or useless or hypothetical. See also **Joseph Ndyamukama vs. NIC Bank and 2 Others**, Misc. Land Application No. 10 of 2014, High Court, Mwanza District Registry at Mwanza (unreported), at page 3. Similar position was stated in the case of **Rutagatina C.L. vs. The Advocates Committee and Another**, Civil Application No. 98 of 2010, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported), where the Court held that:-

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

In the present application, the applicant's grounds of the intended appeal is the presence of illegality in the High Court proceedings. The High Court suo motto raised the issue of jurisdiction and proceeded to determine it without affording parties opportunity to address the court. For that reason, the High Court quashed the proceedings and set aside the decision of the trial Tribunal and ordered any interested party to institute a fresh suit to the competent tribunal. Both parties

said ordering parties to file a fresh suit instead of ordering the case to start afresh before the tribunal will prejudice the parties since the pleadings were filed properly in the DLHT and there is no defects in the pleadings. If the parties were afforded opportunity to address the court, they would have requested the court to order the matter be tried denovo instead of the order to institute the matter afresh affects the parties. A fresh application will be subjected to the law of limitation as it will be filed after 12 years has already passed.

The above mentioned point to be referred to the Court of Appeal appears to be arguable and novel point of law. The intended point is not frivolous, vexatious or useless. It raises issue which need to be determined by the Court of Appeal as the both parties explained in their submissions.

For that reason, the application is allowed. The applicant is granted leave to appeal to the Court of appeal on the intended ground of appeal. Each party to take care of his own cost. It is so ordered accordingly.



A. E. Mwipopo
Judge
16/09/2022

Court: Ruling was delivered today in the presence of the applicant, counsel for the applicant, and both respondents.



A handwritten signature in black ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

A. E. Mwipopo

Judge

16/09/2022