

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

MISC. LAND APPLICATION NO. 78 OF 2022

(Arising from the judgment and decree of the High Court in Land Appeal No. 86 of 2021, Originating from Application No. 72 of 2016 the District Land and Housing Tribunal for Karagwe at Kayanga)

SHUBIRA CLAUDIO.....1st APPLICANT

ROSEMARY MUSHENYERA.....2nd APPLICANT

VERSUS

WILSON MUSHENYERA.....RESPONDENT

RULING

22nd September, 2022 & 30th September, 2022

Isaya, J.

After being appointed as the Administrator of estates of the late Thomas Mushenyera Nkuba who died in 2000, the Respondent sued the Applicants in the District Land and Housing Tribunal of Karagwe vide Application No. 72 of 2016, praying for the Tribunal to declare that the Suitland belongs to the late Thomas Mushenyera Nkuba and the sale of the Suitland to 1st Applicant by the 2nd Applicant was null and void. Therefore, the Tribunal was asked to order a vacant possession from the Suitland.

The Tribunal on 22nd September, 2022 declared the Respondent the lawful owner of the Suitland and ordered the Applicants to give a vacant possession.

Aggrieved, the Applicants appealed to this court vide Land Case Appeal No. 86 of 2021 faulting the decision of the trial Tribunal. However, their appeal was dismissed and the decision of the trial tribunal was upheld.

Still not satisfied with the findings of the District Land and Housing Tribunal and that of this court, now the Applicants are again before this court seeking for leave to appeal to the Court of Appeal of Tanzania to challenge the decision of this court.

When the application was called on for hearing, the Applicants were present but enjoying the legal services of Mr. Joseph Bitakwate, while the Respondent had the services of Ms. Pilly Hussein who appeared opposing the application. In his submission, Mr. Bitakwate prayed the affidavit of the Applicants to be adopted. He further argued that there are points of law and evidence which should be looked at by the Court before the leave is granted to them. He pointed out the legal and factual issues to be determined by the Court of Appeal thus:

1. Whether the assessors were properly involved in determining the dispute;
2. Whether the second Applicant was given a fair hearing before the decision was reached;
3. Whether the Respondent proved the case against the applicants to the required standards; and
4. Whether the 2nd Respondent had acquired adverse possession before disposing it to the 2nd Applicant.

He pointed out that these four points which are contained in their affidavit, if the leave is granted, are to be determined by the Apex Court. He went further stating that the duty of this court is not to determine the application on merit rather to see if the raised issues are arguable. That the duty to determine the issues on merit is of the Court of Appeal. He supported his submissions with the cases of **British Broadcasting Corporation vs Erick Sikujua Ng'maryo**, Civil Application No. 138 of 2004 and **Jireys Nestory Mutalemwa vs Ngorongoro Conservation Area Authority**, Civil Application No. 154 of 2016.

In reply, Ms. Pilly Hussein apart from Praying the court to adopt her affidavit, she objected the application arguing that there is no good reason shown by the Applicants' side that there are arguable issues to be determined by the Court of Appeal, because the raised issues were fully determined by this court, therefore, they are useless and hypothetical. Referring this court to **British Broadcasting Corporation vs Erick Sikujua Ng'maryo** (supra), the learned counsel for the Respondent, insisted that where the issues raised are frivolous, vexatious, or useless, leave should not be granted as it occurred in this case. She prayed the court not to grant the leave as there is no arguable issues to be determined by the Court of Appeal.

When rejoining, Mr. Bitakwate insisted that the issues raised are not frivolous, vexatious, or useless and the court should hold the same. He attacked the contentions raised by Ms. Pilly that the learned advocate failed to show how the

raised issues are frivolous, vexatious, or useless. He reiterated his prayer for the leave to be granted so that they may appeal to the Court of Appeal.

The law is now settled on the application for leave to appeal to the Court of Appeal of Tanzania. **Section 47(2) of the Land Disputes Courts' Act, Cap 216 R.E 2019 and Rule 45(a) of the Tanzania Court of Appeal Rules of 2019**, provide that where a party intends to appeal to the Court of Appeal against the decision of this court for the matter which originated from the District Land and Housing Tribunal, he must be granted leave by this Court. Therefore, the appeal against the decision of this court for land matters which originated from the District Land Tribunal is not automatic. The intending Appellant must seek leave of this court before filing his appeal. In determining the leave, this court has discretion to grant leave or refuse it. However, this discretion must be exercised judiciously. [See; **British Broadcasting Corporation vs Erick Sikujua Ng'maryo** (supra)]

In granting leave, the court must ensure that there is good reason to approach the Court of Appeal which may be based on a point of law or on a public importance. The Court of Appeal in the case of **Rutagatina C.L vs. The Advocates Committee and Clavery Mtindo Ngalapa**, Civil Application No. 98 of 2010 stated that:

"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"

Also, the court may grant leave where there are disturbing features which needs to be determined by the Apex Court. In the case of **Harban Haji Mosi and Another vs. Omar Hilal Seif and Another**, Civil Reference No. 19 of 1997 it was 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 spectra of unmeriting matters to enable it to give adequate attention to cases of true public importance."

From the cited case of **Harban Haji Mosi and Another** (supra), it is evident that not every application for leave presented before this court should be granted. The court should be careful in exercising this discretion in order to prevent allowing trivial matters to be taken to the Court of Appeal.

In the instant application, the record of the proceedings at page 7 of the typed proceedings, on 22/12/2017 when the issues were framed, the 2nd Applicant was absent. This being one of the issues pointed out by the counsel for the applicants which touches an important aspect of fair hearing, I find the application meritorious and tenable in law. Indeed, the Applicants have established pertinent issues that need to be determined by the Court of Appeal. I hereby allow the application by granting the leave for the Applicants to appeal

to the Court of Appeal. The costs should be granted upon results of the appeal.

It is so ordered.

DATED at BUKOBA this 30th September, 2022.



Court:

G.N. Isaya

JUDGE

30/09/2022

Ruling delivered this 30th September, 2022 in the presence of the parties.



G.N. Isaya

JUDGE

30/09/2022