

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO 31 OF 2021

**(Arising from the decision of this Court in Civil Appeal No.379 of 2019
(Myambina J), Originating from Matrimonial Cause No.27 of 2015 of the
Resident Magistrate Court of Dar Es Salaam at Dar Es Salaam)**

BETWEEN

IRENEI BONIFACE KIRIA.....APPLICANT

VERSUS

JACQUILINE SAMSON MATORO.....RESPONDENT

RULING

MRUMA, J.

This is a ruling on an application for leave to appeal to the Court of Appeal against the decision and orders of this Court (Mlyambina, J) in Miscellaneous Civil Application No. 379 of 2019. That application originates from Resident Magistrate's Court of Dar Es Salaam Matrimonial cause No. 27 of 2017 and also Miscellaneous Civil Application No. 77 of 2018. The present application is brought under section 5(I) (a) of the Appellate Jurisdiction Act Cap 141 RE 2019 and is supported by an affidavit sworn by the Applicant, Irene Boniface Kiria.

Despite the fact that the Respondent was duly served he didn't enter appearance. In such circumstances the application was heard ex-parte against him and by way of written submissions. Counsel for the Applicant filed his submissions as scheduled.

I have carefully gone through the Applicant's application, the records of the matter and the submissions of the Applicant's counsel. It is the contention of the learned counsel that the learned appellate judge erred in law and fact by upholding the decisions of the trial thus hold that Plot No. 520 and 521 were jointly acquired and that they are matrimonial properties contrary to pleadings and evidence in records and therefore violating the rule pleadings. Section 5(1) (c) of the Appellate Jurisdiction Act [cap 141 RE 2019] under which this application is pegged provides as follows:

" In Civil Proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal (C) with leave of the High Court or Court of Appeal against every other decree, order, judgment, decision or finding of the High Court"

The law quoted above shows that appeal from the High court to the Court of Appeal is not an automatic right. A decision of the High court cannot as a matter of right be appealed against to the Court of

Appeal. A party wishing to appeal to the Court of Appeal must first seek leave from the High Court and if the High Court is satisfied that there is an arguable issue before the Highest Court of the land then it may grant leave. The purpose of this requirement for the leave is to enable the High Court to syphon the issues involved and see whether or not they worth consideration by the Court of Appeal, which is the highest court of the land. The decision to grant or not to grant leave is discretionary. A decision to deny leave does not necessary mean that the court agrees with the decision made by it (before another Judge), instead it simply means that the circumstances of the decision does not warrant a review by the highest Court of the land which is clogged with other more serious and public interest issues for its determination. In Miscellaneous Land Application No. 125 of 2017, the Court of Appeal sitting at Mbeya observed that,

I am therefore, settled in mind that, one of the objectives for enacting the provisions of law requiring leave for appealing to Court of Appeal was to minimize unnecessary appeals to the Court of Appeal"

in **British Broadcasting Corporation v. Eric Sikujua Ngamaryo, Civil Application No. 138 of 2004**; The Court of Appeal stated that:

*"Needless to say, leave to appeal is not automatic. It is within the discretion of the court to grant or refuse. The discretion must however be judiciously exercised and 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 point of law or where the grounds show a prima facie or arguable appeal. (See: **Buckle v Holmes (1926) ALL ER. 90 at page 91**),*

However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical no leave will be granted." Arguably, much as the grant of leave is the discretion of the Court, the same is not automatic in the sense that, the Court has to be satisfied that the grounds of the intended appeal raise arguable issue(s) for consideration by the Court. The Court has to be satisfied that the grounds raised should merit a serious judicial consideration by the Court in order not to waste the precious time of the Court"

For the high court to grant leave, the Applicant must strive to show that the intended appeal is neither frivolous nor vexatious and that it is arguable.

In the present matter the finding of this court that parties should first iron out over the ownership of the disputed houses before a competent forum cannot be arguable point before the court of Appeal. In any event the issue whether a property is matrimonial property or not cannot be resolved if there is an issue as to who owns it, and the Court of Appeal cannot determine the issue of ownership at the level of appeal. After the finding of the trial court that ownership of the disputed property was an issue, the right way for a party who thinks to the contrary was to institute a matter in land ownership forum to establish her/his claim.

For those reasons I find nothing worth consideration by the Court of Appeal in this matter. Accordingly, I deny leave and dismiss the application for leave to appeal to that Court. Let the Court of Appeal deal with issues which worth its attention.

Each party shall bear own Costs.




A.R Mruma,

Judge

12. 9. 2022

Dated at Dar Es Salaam this 12th Day of September 2022 