

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

AT BUKOBA

MISC. LAND CASE APPLICATION NO. 34 OF 2021

(Arising from Land Appeal No. 28 of 2019 in the High Court of Tanzania at Bukoba and Originating from Application No. 45 of 2012 in Bukoba District Land and Housing Tribunal)

DEOGRATIAS KASSINDA.....APPLICANT

VERSUS

MAKIU KAJWANGYA.....1ST RESPONDENT

KANDIDA MTEFUNYA.....2ND RESPONDENT

RULING

Date of Last Order: 24/03/2022

Date of Ruling: 08/04/2022

A.E. Mwipopo, J.

This is application for leave to appeal to the Court of Appeal against the decision of this Court dated 15th March, 2021 in the Land Case Appeal No. 28 of 2019. The said appeal originates from the decision of Bukoba District Land and Housing Tribunal in Application No. 45 of 2012. The applicant herein namely Deogratias Kassinda filed the said application in the District Land and Housing Tribunal seeking to redeem the clan land situated Kangoi Hamlet within Bugombe Village in Bukoba which was sold by the second respondent namely Kandida Mtefunya to the 1st respondent namely Makiu Kajwangya. The trial District Land

and Housing Tribunal decided in favour of the applicant and ordered redemption of the suit land by the applicant by payment of the purchase price to the 1st respondent. The respondents were aggrieved by the decision of the trial Tribunal decision and successfully appealed to this Court. The High Court ordered the applicant to pay the 1st respondent the purchase price with interest at the current bank rates from when he bought the clan land, the cost of all exhausted improvements and shillings 500,000/= as compensation for disturbances. Failure to fulfill the said orders shall lead to forfeiture of the right to redeem clan land on part of the applicant. The applicant was not satisfied with the decision and order of the High Court and filed Notice of Appeal and the application for leave to appeal to the Court of Appeal.

On the hearing date the applicant appeared in person unrepresented, whereas, the respondent was represented by Mr. Josephat Bitakwate, Advocate.

The applicant submitted that he have four grounds of intended appeal to the Court of Appeal. On the first ground of the intended appeal he said that there is no proof that the 1st respondent paid consideration of shillings 6 Million and acknowledge by the 2nd respondent. Thus it was wrong to hold that the sale was complete. On the second ground of intended appeal he said it was wrong of this court to order for valuation of the unexhausted improvements which were not prayed without regarding trial Tribunals order that restrained both parties from

developing the land in dispute. This means there was not development made in the area as result there was no need for the order to make evaluation for the improvements in the said land.

Regarding the 3rd ground of intended appeal the applicant said the High Court erred to hold that it was the applicant who has to refund the 1st respondent instead of the said refund to be done by the 2nd respondent. The sale of the land in dispute was tainted with fraud.

Then, he said regarding his last ground of intended appeal that the High court did not consider adequately his evidence before the trial Tribunal which was heavier than of the respondents and proved that the disputed land is owned by him. He said that these grounds of the intended appeal are arguable and are not wastage of the Court of Appeal time.

In response, the counsel for the respondent said that the applicant has sufficient grounds of intended appeal which need to be determined by the Court of Appeal. But, he prayed for the Court not to grant leave to appeal to the applicant for the reason that the Notice of Appeal filed by the Applicant was not served to the respondent. There is no evidence at all to show that the same was served to the respondent. The said Notice is silent and even the affidavit is silent. Also, he said that there is no proof that the applicant has already applied for copies of the judgment, decree and proceedings for the purposes of the intended appeal. It has

to be noted that the time to file appeal has already expired and it is not possible to proceed with the intended appeal to the Court of Appeal. That the failure to fulfil requirements before the leave is granted renders the intended appeal to be out of time.

In his brief rejoinder the applicant said that he applied for copies of judgment, decree and proceedings of this court already. He did not attach the said letter he was applying for the said document. But since the document is in this court, he prayed for the court to take Judicial Notice of the same.

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 good reason. In the case of **British Broadcasting Corporation V. Eric Sikujua Ng'omaryo**, Civil Application No. 138 of 2004, Court of Appeal of Tanzania at Dar Es Salaam, (unreported), the Court of Appeal 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. Leave will not be granted where the grounds of appeal are frivolous, vexatious or useless or hypothetical. See also **Joseph Ndyamukama V. NIC Bank and 2 Others, Misc. Land Application No. 10 of 2014, High Court, Mwanza District Registry at Mwanza** (unreported), at page 3. The Court of Appeal was of similar position in the case of **Rutagatina C.L. V. The**

Advocates Committee and Another, Civil Application No. 98 of 2010, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported), 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 has four grounds of the intended appeal which he attached in his affidavit. The said grounds of intended appeal are as follows hereunder:-

- 1. Whether the 1st respondent had paid consideration of shillings 6 million and acknowledged by the 2nd respondent according to the law.*
- 2. Whether the first appellate Court was justified to order the valuation of the unexhausted improvements which was not prayed by the respondent without regard to trial Tribunal's order of permanently restraining him from developing the same.*
- 3. Whether the said purported purchase money ought to be refunded by the applicant and not the seller of the suit land.*
- 4. Whether the first appellate Court considered adequately the applicant's evidence tendered in the trial Tribunal by testing it with the respondents' evidence.*

The above mentioned points to be referred to the Court of Appeal which the applicant deliberated them together as they are interrelated appears to be arguable. The points are not frivolous, vexatious or useless. These points raises issues of law and facts which need to be determined by the Court of Appeal as the

applicant explained in his submission. The decision originating from District Land and Housing Tribunal is appealable to the Court of Appeal on both points of facts and points of law.

However, in order for this Court to grant leave, apart from the presence of arguable intended points to be determined by Court of Appeal, the applicant has to file Notice of Appeal and apply for copy of proceedings. The counsel for the 1st respondent said that the Court should not grant leave to the applicant for the reason that the Notice of Appeal filed by the applicant was not served to the respondent and there is no proof that the applicant has already applied for copy of proceedings for the purposes of the intended appeal. I have perused the record available and I'm satisfied that the applicant served the Notice of Appeal to both respondents. The 2nd respondent in person and the counsel for the respondents on behalf of the 1st respondent signed to receive the said notice, thus this issue of service of Notice of Appeal has no merits.

On the failure to apply for the copy of proceedings, the applicant said that he has already applied for the said copy of proceedings but he did not attach the said copy of the letter in the application. He prayed for Court to take judicial notice of the same as the said letter is in the possession of this Court. The Court made an effort to trace the said letter and it was found in the record of the Court. The said letter which is handwritten shows that it was written on 2nd March, 2022.

As the impugned decision of this Court was delivered on 15th March, 2021, it means that the applicant has applied for copy of proceedings more than a year from the date of decision. This is contrary to rule 90 (1) of the Court of Appeal Rules, 2009 which provides that an application for a copy of the proceedings in the High Court has to be made within thirty days of the date of the decision against which it is desired to appeal. The delay to apply for a copy of proceedings is fatal since the letter is important in computing the time within which the appeal is to be instituted. The rule provides for exclusion of such time as may be certified by the Registrar of the High Court as having been required for the preparation and delivery of that copy to the applicant were the application for the copy of proceedings was made within 30 days from the date of delivery of the impugned decision. The same position was stated by the Court of Appeal in the case of **Mondorosi Village Council and 2 Others v. Tanzania Breweries Ltd and 4 Others**, Civil Appeal No. 66 of 2017, Court of Appeal of Tanzania at Arusha, (Unreported).

Thus, granting leave to appeal to the applicant who did not apply for the copy of proceedings within time while knowing that the said appeal will be struck out for being filed out of time is wastage of the time of the Court of Appeal. Thus, I find that the applicant has applied for the copy of proceedings out of time provided by the law and as result the Deputy Registrar of the High Court could not

exclude the time for filing the appeal which is 60 days from the date of the decision is appealed against. The intended appeal to the Court of Appeal is out of time even before it was filed.

For that reason, the Court reject to grant leave for the applicant to appeal to the Court of appeal. Each party to take care of its own cost. It is so ordered accordingly.



A. E. Mwipopo

Judge

08.04.2022

The ruling was delivered today, this 08.04.2022 in chamber under the seal of this court in the presence of the applicant, the counsel for the 1st respondent and in absence of the 2nd respondent. Right of appeal explained.



A. E. Mwipopo

Judge

08.04.2022