

**IN THE HIGH COURT OF TANZANIA**

**(SONGEA DISTRICT REGISTRY)**

**AT SONGEA**

**MISC. LAND CASE APPLICATION NO. 13 OF 2022**

*(Originating from Land Appeal No. 04 of 2022, High Court of Tanzania at Songea)*

**EGNO LONGINUS NYINGO ..... APPLICANT**

***VERSUS***

**JOAKIMU JOAKIMU NYINGO ..... 1<sup>ST</sup> RESPONDENT**

**DITRICK NDOMBA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

24/03/2023 & 29/03/2023

**E.B LUVANDA, J.**

The applicant above mentioned, moved this Court by way of an application to grant him a leave to appeal to the Court of Appeal of Tanzania against the judgement and decree of this Court dated 13<sup>th</sup> (sic, 12<sup>th</sup>) September, 2022 before Honourable U.E Madeha, J. The application was made under the provision of section 5(1)(c) of the Appellate Jurisdiction Act, as revised and rule 43(a) of the Court of Appeal Rules of 1979. The application was supported by an affidavit sworn by the Applicant.

In the affidavit in support of the application at paragraph 5, the Applicant grounded the reasons in which his application relied upon, thus;

- (i) Whether long prescription by the applicant over the suit land of their family was not in law a bar to the claim by the respondents.
- (ii) Whether by using power of attorney the appellant did not have the necessary locus to sue the respondents.

This application was argued by way of written submission. Both parties were unrepresented, fending for themselves.

The applicant submitted that, he is a representative of the clan in all matters via exhibit P.1, a special Power of Attorney which was executed on 26<sup>th</sup> March, 2019 between him and Nyingo's Clan (seventy seven members), purposively to act as a representative of the clan before the District Land and Housing Tribunal in Misc. Land Application No. 20 of 2019. The applicant submitted further that, he was surprised by the decision of the honourable Judge held that he does not have a necessary locus to sue the respondent.

In response, the respondents submitted that the applicant prayer to appeal to the Court of Appeal is baseless on the ground that, the

applicant has no locus stand to sue on the matter. The respondents insisted the decision of the Court that the power of Attorney signed by the Nyingos clan does not give him locus stand on the matter taking into consideration that, the issue is probate which has to be dealt with in probate Courts. The respondents submitted that, the said Power of Attorney was not registered contrary to the requirements of the law. It is the respondents opinion that the decision of the Court is firm and does not form any legal issue to be addressed by the Court of Appeal. They prayed the matter be dismissed with cost.

In a brief rejoinder, the applicant reiterated what he submitted earlier and he insisted that his application is not baseless but the appellate Court was not correct. He prayed his application be granted to enable him address his issue before the Court of Appeal.

The applicant staged his application under the provision of section 5(1)(c) of the Appellate Jurisdiction Act, as revised, and rule 43(a) of the Court of Appeal Rules of 1979.

It is a cardinal law that, the second appeal lie to the Court of Appeal of Tanzania in civil matters of this nature only if this Court satisfied that the intended appeal involve a substantial question of law or a matter of general importance which to the opinion of this Court require the Apex

Court interference. This was decided in the case of **Lightness Damiani & Others v. Said Kasim Chageka**, Civil Application No. 450 of 2020, Court of Appeal of Tanzania at Dar es Salaam (unreported) where the Court borrowed the principle from the case of **Rutagatina C.L V. The Advocates Committee and Another**, Civil Application No. 98 of 2010 (unreported) thus;

*"Needless 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 judiciously exercise 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 a novel point of law or where the grounds show a prima facie or arguable appeal (see: **Buckie v Holmes** (1926) ALLER. R. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted."*

From the quoted precedent, it is the finding of this Court that, the applicant was duty bound to establish a matter of general importance or novel point of law which needs interference of the Court of Appeal. The applicant claimed to be a clan representative and the administrator of the estate appointed by the clan member by virtual of Power of

Attorney, exhibit P.1. It is elementary knowledge that clan members merely nominate someone with a view of being formerly appointed by the Court of law after fulfilling the probate procedure as required by the law (Probate and Administration of the Estate Law). It is only after grant of a probate or letter the administration instrument he can step in the shoes of the deceased, whereby he can sue or being sued on behalf of the deceased. In our jurisdiction no one can administer the estate of the deceased through a power of attorney indeed sanctioned by clan members.

The applicant's intended grounds does not meet a minimum threshold to the satisfaction of this court being of importance or novel point of law or arguable and worthy consideration by the Court of Appeal.

The application for leave to appeal is refused. Each party bear his/her own cost. It is so ordered.

E.B LUVANDA

**JUDGE**

29/03/2023



