

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC. LAND APPLICATION NO. 121 OF 2022

(C/F High Court of Tanzania at Arusha Land Appeal No. 31 of 2020, Originated from the District Land and Housing Tribunal for Arusha at Arusha, Application No. 116 of 2012)

JACKSON NREWA.....APPLICANT

VERSUS

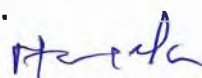
ELIA NREWA AYO.....RESPONDENT

RULING

05/06/2023 & 14/6/2023

MWASEBA, J.

Before this court is an application filed by the applicant herein above preferred under **Section 47 (1) of the Land Disputes Court Act**, Cap 216, R.E 2019, **Section 5 (1) (c) of the Appellate Jurisdiction Act**, Cap 141, R.E 2019 and **Rule 45 (a) of the Tanzania Court of Appeal Rules**, 2009 as amended by G.N No. 362 of 2017. He is seeking for an order of leave to appeal to the Court of Appeal against the decision of this court in Land Appeal No. 31 of 2020.

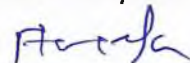


The application is supported by an affidavit of the applicant and strongly opposed by a counter affidavit of the respondent.

The parties enjoyed the legal service from **Ms. Sara L. Lawena** and **Mr. Joseph Moses Oleshangay**, learned counsels for the applicant and respondent respectively. With the leave of the court, the matter was disposed of by way of written submissions which were filed accordingly.

Supporting the application Ms. Lawena submitted that they are aware that leave to appeal to the CAT is not automatic, it is within the discretion of the court which has to be done judiciously. She submitted further that as per the intended memorandum of appeal, the appellant is intending to challenge the fact that he has been in occupation of land for 12 years without any interruption. Therefore, the suit was time barred.

She argued further that, the person who claimed to be the administrator of the estate of the late Nrewa and distributed the estate to the respondents did not submit any letters of administration or inventory to prove the same. It was her further argument that even the opinion of the assessors was not read aloud before the tribunal which is contrary to the law. Her arguments were supported with the case of **Edina Adam Kibona vs Absolm Swebe (Sheli)**, Civil Appeal No. 286/2017 (CAT at



Mbeya, Unreported). In the end, she prayed for the application to be granted.

Mr. Oleshangay on the other hand disputed the application and stated that the applicant failed to prove he occupy the disputed land by way of adverse possession and after going through the entire submission there are no points of law that the Court of Appeal is invited to determine. He supported his arguments with several cases including the case of **Rutagatina CL vs The Advocates Committee and Another**, Civil Application No. 98 of 2020 (Unreported).

In brief rejoinder the counsel for the applicant reiterated what has already been submitted in her submission in chief.

Having heard the rival submissions from both parties, this court will now determine the merit of the application.

It is a cardinal principle that a party who is aggrieved by the decision of the High Court must before appealing to the Court of Appeal of Tanzania seek leave in the High Court. However as submitted by the counsel for the respondent the grant is not automatic. It is obvious that there must be some criteria to be taken into consideration by the High Court before granting the application as it was held in the case of **Simon Kabaka**



Daniel vs. Mwita Marwa Nyang'anyi & 11 others [1989] TLR 64

that:

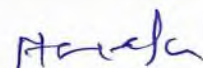
"In application for leave to the Court of Appeal the application must demonstrate that there is a point of law involved for the attention of the Court of Appeal...."

This position has also been well elaborated by the Court of Appeal of Tanzania in the case of **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo**, Civil Application No. 138 of 2004, (Unreported) where the court stated that;

"As a matter of general principle, leave to appeal will be granted where the grounds of appeal raise a general importance or a novel point of law or where the grounds show a prima facie or arguable appeal"

Being guided by the cited cases, the reasons submitted by the applicant for this court to grant the application as per paragraph 6 of the affidavit supporting the application was that they had a great chance of success in their intended appeal without stating which reasons assure them that they will succeed in their intended appeal.

The grounds that the administrator did not submit any proof of him being appointed by the court as administrator of the estate of the late Nrewa and that even the inventory form was not tendered as exhibit to



prove that the respondent was also given part of the estates and that the opinions of the assessors was not read aloud at the tribunal as required by the law, does not featured anywhere in his affidavit.

It is a well-known principle that submissions are not evidence and cannot be used to introduced evidence as it was held in the case of **Registered Trustees of the Archdiocese of Dar es Salaam vs The Chairman, Bunju Village Government & 11 Others**, Civil Appeal No. 147 of 2006 (Unreported) that:

"Submission are not evidence. Submissions are generally meant to reflect the general features of a party's case. They are elaborations or explanation on evidence already tendered. They are expected to contain augments on the applicable law. They are not intended to be a substitute for evidence."

Being guided by the cited authority, the applicant's reasons or points must be reflected in his affidavit supporting the application for them to be explained in submissions as submissions are there to expound what had been pleaded in the affidavit.

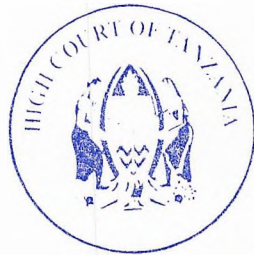



Thus, I concur with Mr. Oleshangay's argument that the applicant has not demonstrated points of law worth to be determined by the Court of Appeal.

Given the above positions this court is satisfied that the applicant has not demonstrated any point of law which needs the attention of the Court of Appeal. Consequently, this application is dismissed without costs as parties herein are relatives.

It is so ordered.

DATED at **ARUSHA** this 14th day of June, 2023.




N.R. MWASEBA
JUDGE