

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO. 46 OF 2022

(C/F LAND CASE NO. 32 OF 2011)

M/S TROPICAL AFRICA TRAILS LTD.....APPLICANT

VERSUS

SAIBUL LAIZER.....1ST RESPONDENT

ESTOMII ZAKAY.....2ND RESPONDENT

OBEDI NAIGISA.....3RD RESPONDENT

LEMBRIS NAIGI.....4TH RESPONDENT

SIMON MARUNDA.....5TH RESPONDENT

RULING

09/05/2023 & 07/08/2023

GWAE, J

The applicant has brought this application under the provisions of section 5 (1) (c) of the Appellate Jurisdiction Act Cap 141 R. E 2019 and Rule 45 (a) of the Court of Appeal Rules 2009. She is seeking leave of this court to appeal to the Court of Appeal of Tanzania against the decision of the Deputy Registrar of the court in an application for the decree through Land Case No. 32 of 2011 delivered on 14th March 2022.

The applicant's chamber summons is accompanied with an affirmed affidavit of Mr. Ngereka Eliamini Miraji, the learned advocate who represented the applicant in the said Application for execution before the court. On the other hand, the respondents seriously opposed this application through the counter affidavit dully sworn by their learned counsel Ms. Sara Severin Lawena.

In his affidavit, Mr. Miraji contended that, the applicant is dissatisfied by the ruling of this court (**Massam**, DR, as she then was now J) and therefore has filed a notice of appeal to the Court of Appeal of Tanzania. He stressed that since it is the requirement of the law that appeals to the Court of Appeal of Tanzania against the decisions of the High Court exercising its original jurisdiction are appealable subject to leave of this court, he has thus filed this application.

Moreover, Mr. Ngereka has also argued that, the intended appeal raises a prima facie arguable appeal and there is an issue of general importance on the following points; **First**, the Deputy Registrar (as she then was) failed to consider the applicant's submissions by saying that the said arguments were supposed to be raised during the main case. **Second**, the appeal is of crucial importance as the High Court failed to consider and take into consideration of the approved deed plan of Arusha

Municipality, which, shows all the boundaries, and the owner of the suit land and **third**, the Deputy Registrar failed to deliberate the issue before it.

Opposing the application, the respondents argued that, what has been stated by the applicant's counsel are argumentative and irrational.

When the matter was called on for hearing before me, the parties stood represented by their respective counsel who took oaths in their affidavits for and against the application. With leave of the Court, this application was disposed of by way of written submissions, which I shall consider them in the course of determining this application.

The principle of law governing grant of leave to appeal to the Court of Appeal is well settled. In a proper or competent application, the duty of this court is just to look as to whether there are contentious issues calling for judicial determination by the Court of Appeal. My finding is fortified by the case of **British Broadcasting Corporation vs. Erick Sikujua Ng'maryo**, Civil Application No. 138 of 2004 (unreported). In the former case, the Court of Appeal inter alia said:

"Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily the proceedings as a whole reveals such disturbing feature as to require the guidance of the Court

of Appeal. The purpose of the provision is therefore to spare the court the spectra of un-meriting matters and enable it to give adequate attention to cases of true public importance"

The Court of Appeal went on insisting on the discretionary use of powers in granting leave, and had the following to say:

"Needless to say, leave to appeal is not automatic. It is within the discretion of the work of the court to grant or refuse leave. The discretion should 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... However, where the grounds of appeal are frivolous, vexatious, useless or hypothetical, no leave will be granted."

Basing on the above principle and taking into board the present application for the sought leave as well as the parties' written submissions. From outset, I am unable to appreciate the arguments advanced by the applicant's advocate if there is any point of law worth for consideration by the Court of Appeal. I am holding so, not because of the fact that, the execution had been carried out since 14th March 2023 but more importantly, absence of the arguable case before the Court of Appeal. In

the order, subject of the intended appeal, the decree holders now respondents in Land Case No. 32 of 2011 filed an application for execution of the decree of the court where the then Deputy Registrar of the court held and I quote;

"This court join hand with the decree holders' counsel that no sufficient reasons were adduced by the judgment debtor to move the court to struck (sic) out this application. The first reason herein that the judgment debtor never encroached on the disputed land was supposed to be dealt in the main case or on appeal if the they were aggrieved by the trial court decision not at this stage. As for the issue that the same was sold to the third party (NSSF) were (sic) supposed to be dealt with in the main case not at this stage. As submitted by the decree holders' counsel, Mr. Ngereja is only trying to defeat justice as he is aware that you cannot defend the main at this stage".

The present applicant is now seeking to challenge the decision of the Deputy Registrar of the court to the Court of Appeal. I really do not see any avenue of holding that, there is contentious and arguable legal points since as rightly held by the Deputy Registrar that the issue of third party being the seller of the suit land cannot and could not be raised by the judgment debtor now applicant. In my decided view, that concern ought to have been raised by such third party (NSSF) in the objection

proceedings pursuant to provisions of Order XX1 of the Civil Procedure Code, Cap 33, Revised Edition, 2019. Similarly, the DR's order with effect that, the issue on whether the applicant encroached the suit land or not, in my considered opinion, does not constitutes any issue of general importance or novel point of law worth for consideration by the Court of Appeal as was correctly stressed in **British Broadcasting Corporation vs. Erick Sikujua Ng'maryo** (supra).

Considering the above argument, I am therefore of the firm view that, this application is not meritorious. Consequently, the applicant's application for leave is dismissed with costs.

It is so ordered.

DATED at **ARUSHA** this 7th August 2023




MOHAMED. R. GWAE
JUDGE