

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA

MISC. LAND APPLICATION NO. 153 OF 2022

(C/F High Court Land Appeal No. 51 of 2021, The Resident magistrate Court of
Arusha at Arusha, Extended Land Appeal No. 52 of 2021, Originated from
Application No. 115 of 2017, original Application No. 115 of 2007 District land and
Housing Tribunal of Arusha at Arusha)

BETWEEN

MEING'ATU NGOSHOI.....APPLICANT

VERSUS

VILLAGE EXECUTIVE OFFICER

MANYIRE VILLAGE.....1ST RESPONDENT


MANYIRE VILLAGE COUNCIL.....2ND RESPONDENT

RULING

31/07/2023 & 30/8/2023

MWASEBA, J.

This is an application for leave to appeal to the Court of Appeal of Tanzania (CAT). The applicant Meing'atu Ngoshoi preferred the application under **Section 47 (2) of the Land Disputes Courts Act**, Cap 216 R.E 2019 and **Rule 45 (a) of the Court of Appeal Rules**, 2009.



The application was supported by an affidavit sworn by the applicant himself. The respondents objected the application through a counter affidavit sworn by Mr. Abdallah Lufungulo, Village Executive Officer.

When the matter came for hearing which was done orally, Mr. Dismas Lume, learned advocate represented the applicant whilst Ms. Zamaradi Johanness, learned State Attorney represented the respondents.

It was Mr. Lume's submission that, as per paragraph 7 (a) – (c) of the affidavit filed in support of the application, the intended grounds for determination by the court of appeal are:

- a) The 1st Appellate Court was correct to ignore the applicant's objection that the appeal was hopelessly time bared.
- b) The 1st appellate court was correct to ignore that the applicant's appeal was incompetent for failure to attach a copy of order appealed for.
- c) The 1st Appellate court was correct to nullify the execution order in Application No. 115 of 2007 on flimsy grounds that the decree was defective.

On the 1st ground of intended appeal Mr. Lume argued that an appeal from DLHT to High Court need to be filed within 45 days as per **Section 41 (2) of the Land Disputes Courts Act**, Cap 216 R.E 2019 but



extended Land Appeal No. 52 of 2021 was filed after the lapse of 48 days without seeking leave of the court to file an appeal out of the prescribed time.

On the 2nd ground of intended appeal, Mr. Lume submitted that the applicant is intending to challenge the facts that Land Appeal No. 52 of 2021 was filed without attachment of an order appealed for which is contrary to **Order 49 Rule 1 (1) of the Civil procedure Code**, Cap 33 R.E 2019. He supported his argument with the case of **Olipa Daniel v. Jangawe Msuya** (2006) TLR No. 18.

On the 3rd ground of the intended appeal, Mr. Lume submitted that the applicant is intending to challenge the fact that execution order in Application No. 115 of 2007 was nullified on flimsy ground that the decree was defective due to the variance of names Ephraim and Efraim. It was his further submission that as his appeal has overwhelming chances of success if it will be determined by the Court of Appeal and prayed for the application to be dismissed.

Opposing the application, Ms. Zamaradi adopted their counter affidavit to be part of her submission. She argued further that, the applicant failed to attach a decision that is intended to be appealed for as required by the law which means no decision which is intended to challenge at



the Court of Appeal. She submitted further that, at this stage this court need to see whether the intended grounds of appeal have a matter of law and facts worth to be determined by the Court of Appeal.

She argued further that, the applicant failed to show any illegality or arguable case on the records of the judgment intended to be appealed for. More to that the intended grounds are hanging so no decision intended to be appealed for was attached by the applicant. She supported her arguments with several cases including the case of **British Broadcasting Corporation v. Erick Sikujua Ngimaryo**, Civil Application No. 138 of 2004.

In brief rejoinder, Mr. Lume submitted that there is no law which require an applicant in application of this nature to attach a copy of the decision need to be determined by the court of appeal. That requirement is only applicable when the application is made at the Court of Appeal in a second bite as per **Rule 45 (a) of the Court of Appeal Rules**. He argued further that Ms. Zamaradi did not cite any provisions of case law to support her allegation. He maintained his prayer for the application to be granted.




Having gone through the rival submission in support and against the application, this court will now determine the issue of whether the application is meritorious or not.

Starting with the issue raised by the counsel for the respondent that the applicant failed to attach a decision sought to be appealed for, this court is of the firm view that the same is not mandatory at this stage. The applicant at this stage is only supposed to show the intended grounds which need to be determined by the court of appeal so that the court can see whether there are points of law or not. Therefore, this argument is baseless.

Coming to the merit of the application, the principle of law governing grant of leave to appeal to the Court of Appeal is well settled. The duty of this court is just to look as to whether there are contentious issues needing determination by the Court of Appeal. In the case of **British Broadcasting Corporation v. Erick Sikujua Ng'maryo**, (supra). 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

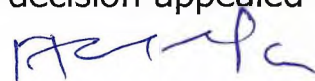


spare the court the spectra of un-meriting matters and enable it to give adequate attention to cases of true public importance."

The Court of Appeal went on insisting on 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."

I have examined the application, and the submissions made by both parties and noted that the 1st and 2nd grounds of intended appeal have issues of general importance worth to be determined by the Court of Appeal of Tanzania. This is due to the fact that on the 1st ground the applicant is intending to challenge jurisdiction of the court after alleging that the matter was determined out of the prescribed time. On the 2nd ground of intended appeal, the applicant is challenging the facts of whether in appeal a copy of the order of the decision appealed for need



to be attached or not. As for the last grounds of Intended appeal since the applicant is only challenging the issue of names, this court is of the firm view that the allegation is not a matter of law and the same is not worth to be determined by the Court of Appeal and is hereby dismissed.

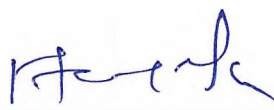
That being said, this application is allowed to the extent explained herein above. The applicant is granted leave to appeal to the Court of Appeal of Tanzania based on the following grounds:

1. The 1st Appellate Court was correct to ignore the applicant's objection that the appeal was hopelessly time bared.
2. The 1st appellate court was correct to ignore that the applicant's appeal was incompetent for failure to attach a copy of order appealed for.

It is so ordered.

DATED at ARUSHA this 30th day of August, 2023.




N.R. MWASEBA
JUGE