

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

**AT BUKOBA**

**MISC. LAND CASE APPLICATION NO. 42 OF 2023**

*(Arising from High Court of United Republic of Tanzania (Bukoba District Registry) in Misc. Land Application No. 103 of 2022 and Misc. Land Application No. 19 of 2022 and Land Case Appeal No. 28 of 2021 before the District Land and Housing Tribunal for Kagera at Bukoba and original Land Case No. 01 of 2021 before Bwanjai Ward Tribunal)*

**PASKAZIA WICHSLAUS BUHEKERA ..... APPLICANT  
VERSUS**

**VERDIANA MASHURANI.....RESPONDENT**

**RULING**

*Date of last Order: 31. 08.2023*

*Date of Ruling: 01.09.2023*

*A.Y. Mwenda, J.*

This is an application for leave to appeal to the Court of Appeal brought under section 47(4) and 48 (2) of the Land Disputes Court's Act [CAP 216 R.E 2019]. It is supported by an affidavit sworn by the applicant. In counter thereof, the respondent filed a counter affidavit which was sworn by Mr. Lameck John Erasto, learned advocate for the respondent.

During the hearing of this application, both parties enjoyed the legal services from the learned counsels. The applicant was represented by Mr. Frank Karoli John, learned counsel while the respondent enjoyed the legal services from Mr. Lameck Erasto, the learned counsel.

When invited to submit in support of his application, Mr. Frank Karoli prayed the contents of affidavit to be adopted and form part of his oral submissions. He further submitted that the applicant intends to challenge the ruling of this court in Misc. Land Application No. 19 of 2022. He submitted that in Misc. Land Application No. 19 of 2022 the applicant was seeking extension of time to file an appeal out of time against the decision of the District Land and Housing Tribunal in Land Appeal No. 28 of 2021. He submitted that the reasons for this court to grant this application is found under paragraph 8 of the applicant's affidavit. He therefore prayed this court to grant this application because there are serious illegalities to be determined by the Court of Appeal. To support his argument, he cited the case of ILEMELA MUNICIPAL COUNCIL VS NDEONASIA JOSEPH MARENGE, MISC. CIVIL APPLICATION NO 86 OF 2022

Responding to the submissions by the learned counsel for the applicant, Mr Lameck submitted that, this application has no merit to warrant this court to grant leave to appeal to the Court of Appeal. He submitted that before this court the applicant filed an application for extension of time to file appeal out of time but failed to advance sufficient reasons. He submitted that the reasons advanced before this Court was sickness but the applicant failed to tender any document to prove to that she was sick. He submitted that there is no any hospital chit which were tendered or attached to the applicant's affidavit to prove the same. According to him this was not sufficient reason for extension of time because the applicant did not state the degree of her sickness.

With regard to the issue of illegality the learned counsel for the respondent submitted that illegality is a ground for extension of time but the same has to be stated. He submitted that in the present matter, the applicant neither mentioned it during the hearing of the said application nor before the hearing present application. According to him the applicant failed to advance sufficient reasons and therefore this court was justified to dismiss the said application for lack of sufficient reasons. He then prayed this application to be dismissed for lack of merits.

In rejoinder to the submission by the learned counsel for the respondents, Mr. Frank submitted that the grant of leave to appeal to the Court of Appeal is the discretion of this court and it is the right of everybody to appeal to the highest court. He therefore concluded by stating that since under paragraph 8 there are reasons of this court to grant leave to appeal to the Court of Appeal, he therefore prayed this application to be granted.

That marks the end of the summarized submissions for and against the present application which now allows this court to determine the fate of the present Application.

At the outset, it is apposite to point out that leave to appeal is not automatic as it within the discretion of the Court to grant or refuse. While propounding this principle, the Court of Appeal in *BRITISH BROADCASTING CORPORATION VERSUS ERIC SIKUJUA NG'IMARYO*, CIVIL APPEAL NO. 138 OF 2004 set some conditions for scrutiny/consideration in exercising the said discretion. The Court

said that the discretion must however judiciously be exercised and on materials before the court. Of importance in the said case are the following words which read as follows:

"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 prima facie or arguable appeal.... However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted."

[Emphasis added]

Similar positions were also covered in the case of SAFARI MWAZEMBE V. JUMA FUNDISHA, CIVIL APPLICATION NO. 503/06 OF 2021, CAT (Unreported) where the Court held inter alia that:

"Arguably, much as the grant of leave is discretion of the court, the same is not automatic in sense that, the Court has to be satisfied that the grounds of the intended appeal raise arguable issue(s) for consideration by the Court. The Court has to be satisfied that the grounds raised should merit a serious judicial consideration by the Court in order not to waste the precious time of the Court." [emphasis added].

Based on the above legal position, the issue for determination is whether the Applicant has raised grounds passing the test in the authorities stated herein above.

In the present matter, the applicant's proposed grounds of appeal appear at paragraph 8 (a) to (f) where she summarily challenges this court justification leading to dismissal of Misc. Land Application No. 19 of 2022 on account of failure to establish sufficient cause and for failure to demonstrate illegalities in the impugned decision.

While submitting in support of this application Mr. Frank Karoli John the learned counsel for the applicant alleged that the grounds covered under paragraph 8 are matters of serious judicial consideration. This court is aware that its duty at this stage is not to determine merits or demerits of the appeal rather is to see if the raised grounds are of serious judicial consideration or arguable fit to be tabled or placed before the court of appeal. These cannot be obtained without perusing the ruling subject to this application. To do so this court took considerable time to go through the ruling of this court only to note two (2) reasons were advanced as ground for refusal for extension of time. One, that the applicant failed to demonstrate sufficient cause for extension of time and two failures to disclose the alleged illegality. A scrutiny on what was submitted by the learned counsel for the applicant failed to find anything suggesting that this court erred in its findings. In other words, the applicant has failed to state as to whether she demonstrated sufficient cause let alone failure to disclose the


alleged illegality. After all illegality is not automatic a panacea for all application for extension of time. See IBRAHIMU TWAHIL KUSUNDWA & 1 ANOTHER VS EPIMAKI S. MAKOI & 1 ANOTHER, CIVIL APPLICATION No. 437/17 of 2022 (Unreported) CAT at page 12 where it was held inter alia that,

“... an illegality of the impugned decision will not be used to extend time in the circumstance of this case, for, no room will be available to rectify it in the application for stay of execution intended to be filed. **Illegality of the impugned decision is not a panacea for all applications for extension of time.** it is only one in situations where, if the extension sought is granted, that illegality will be addressed.” [Emphasis added]

From the foregoing observations this court is of the view that the grounds raised by the applicant at paragraph 8 of her affidavit are neither arguable nor matters of judicial consideration worth to be tabled before the Court of Appeal. In view of the above, I thus find no merits in this application and it is hereby dismissed with costs.

It is so ordered.



  
A.Y. Mwenda  
**Judge**  
01.09.2023

Ruling delivered in chamber under the seal of this court in the presence of Mr. Lameck John Erasto learned counsel for the respondent and in the presence of Mr. Frank Karoli John learned counsel for applicant.



  
A.Y. Mwenda

**Judge**

01.09.2023