

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

MISC. LAND APPLICATION NO. 56 OF 2022

*(C/F Land Appeal No. 59 of 2022 Execution Application No. 59 of 2011, District Land and Housing
Tribunal of Arusha at Arusha Original Application No. 15 of 2009 Moivo Ward Tribunal)*

CHRISTINA JOHN (Administration of the Estate of
the late **JOHN KORDUNI**) **APPLICANT**

VERSUS

ASNATH EMMANUEL (Administratrix of the Estate of
the late **EMMANUEL KORDUNI**) **RESPONDENT**

RULING

21st August & 29th September, 2023

TIGANGA, J.

The applicant is seeking leave to appeal to the Court of Appeal of Tanzania against the whole judgment and decree of this Court, Kamuzora, J. in Misc. Land Appeal No. 23 of 2022.

The application is by chamber summons made under section 47 (2) of the **Land Disputes Courts Act**, Cap 216 R.E. 2019, section 5 (1) of the **Appellate Jurisdiction Act** (Cap 141 R.E. 2019 hereinafter, AJA) and Rule 45 (a) of the **Court of Appeal Rules**, 2009 as amended. The application is

further supported by the applicant's affidavit which she deposed that, her grievance is against the execution order issued by the District Tribunal in Application No. 59 of 2011 and upheld in this Court. Under paragraph 5 of the said affidavit, she stipulated three grounds to be considered in the intended appeal as follows;

1. That, the High Court erred in law in upholding the decision of the District Land and Housing Tribunal while there were no proceedings in the Court to rely on and the proceedings received from the respondent without satisfying itself whether the said proceedings were the true copies issued by the tribunal.
2. That, the High Court erred in law and fact in holding that the boundaries of the suit land were effectively described on the application in the absence of the trial tribunal records.
3. That, the High Court erred in law and fact in basing its decision on the proceedings while the Ward Tribunal did not describe where the suit land was located.

The application was opposed through the counter affidavit sworn by the respondent in which she disputed the intended appeal calling it frivolous

and vexatious. During the hearing of the application which was by way of written submissions, the applicant was represented by Ms. Ombeni Kimaro whereas the respondent was represented by Ms. Sarah Lawena, both learned Advocates.

Supporting the application, Ms. Ombeni submitted that, section 11 of the Ward Tribunal Act, Cap 206 R.E. 2019 provides for how the complaint is submitted before the Ward Tribunal either written or orally. She averred that, the judgment of the Ward Tribunal did not show the description of the suit land and that, however, the said land must be mentioned from the complaint stage. She argued, that the district tribunal as well as the High Court erred in upholding the Ward Tribunal decision despite acknowledging the same did not describe the suit land.

Apart from that, she argued that the High Court received proceedings of the Ward Tribunal from the respondent without following procedure as well as without approving them to be true copies. She referred the Court to a number of cases including that of **Martin Fredrick Rajab vs. Ilemela Municipal Council and Another**, Civil Appeal No. 197 of 2019 CAT at Mwanza, (unreported) where it was insisted on the mandatory requirement

of describing the suit land failure of which renders the whole proceedings a nugatory.

Ms. Ombeni further submitted that there is an arguable prima facie case worth the Court of Appeal's scrutiny and also considering the fact that appealing to the Court of Appeal is the parties' constitutional right. As such, the applicant should not be denied such right. She prayed that, this application be granted.

Opposing the application, Ms. Lawena challenged the application for being incompetent and abusing of court process because according to section 47 (3) of the Ward Tribunal Act, the proper procedure to appeal to the Court of Appeal is by first seeking Certification of Points of Law to be considered by the said Court. To cement her argument, she cited the case of Marco Kimiri and Another vs. Naishoki Eliahu Kimiri, Civil Appeal No. 39 of 2012, CAT at Arusha which emphasized the importance of certification of the Points of Law to be Considered by the Court of Appeal.

She further contended that, there is another application for certification of Points of Law before Hon. Bade, J. in this very Court which confirms that the applicant is abusing the court processes. Regarding the

grounds raised for the intended appeal, Ms. Lawena submitted that the same are not matters of general importance or show novel points of law that show *prima facie* arguable cases. She prayed that, this application be dismissed with cost.

In her rejoinder, Ms. Ombeni referred to section 47 (2) of the Land Disputes Act which clearly shows that, an aggrieved party on appeal by the High Court may, with leave, appeal to the Court of Appeal. She argued the same does not show if when applying for certification of points of law one should refrain from applying for leave to appeal too. To buttress her point, she cited the case of **Godwin Kagaruki vs. The Hon. President of the United Republic of Tanzania & 5 Others**, Civil Appeal No. 270 of 2020, CAT at Dsm, where seeking leave to appeal to the Court of Appeal was considered as a mandatory procedure.

She also averred that the intended appeal originated from the execution order by the District Tribunal and not against the decision of the Ward Tribunal, hence there is no element of abuse of court processes as claimed by the respondent.

Having considered the parties' affidavits and their rival submissions the main issue for determination is whether the applicant has shown sufficient cause to be granted leave to appeal to the Court of Appeal. In determining so, the role of the Court is not to stand in the shoes of the Appellate Court, but only to consider whether or not arguable issues have been raised in the proposed grounds of appeal. Section **47(1) of the Land Disputes Courts Act** provides that:

"A person who is aggrieved by the decision of the High Court (Land Division) in the exercise of its original, revislonal or appellate jurisdiction may with leave of the High Court (Land Division) appeal to the Court of Appeal by the Appellant Jurisdiction Act"

It should be noted that a grant of leave to the Court of Appeal is not automatic, a party has to convince the court that he has genuine grounds and must demonstrate that the proposed appeal raises contentious issues worth being considered by the Court of Appeal. In **Sango Bay Estates Ltd & Others vs. Dresdner Bank** [1971] EA 17 (2) the defunct East African Court of Appeal held that:

"Leave to appeal from an order in civil proceedings will normally be granted where prima facie, it appears that there are grounds of appeal which merit serious judicial consideration."

The same was also observed in the case of **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo**, Civil Application No. 133 of 2004 (Unreported) where it was held that;

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

In the application at hand, the applicant's main grievance has two facets; description of the suit land and Ward Tribunal's questionable proceedings. Since the applicant has managed to expound her grievance, I see there is an arguable prima facie case worth being decided by the Court of Appeal on the following grounds;

1. Whether the High Court erred in law in holding that the boundaries of the suit land were effectively described on the application.
2. That, the High Court erred in law in basing its decision in the absence of the Ward Tribunal records.

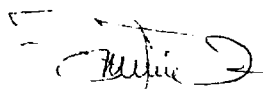
In the upshot, the applicant's application is hereby granted as prayed.

Costs to follow the events.

It is accordingly ordered.

DATED and delivered at **ARUSHA** this 29th day of September 2023




J.C. TIGANGA
JUDGE