

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF TABORA
AT TABORA**

MISC. LAND APPLICATION NO 36 OF 2023

(Arising from Land Appeal No. 23 of 2021 of the High Court of Tanzania at Tabora)

ABDALLAH EMMANUEL JUMAPILI

INDIA KADULYI

SHIJA SAWA

VERSUS

ATHUMAN MOHAMED KANUMGUNDA

(An administrator of the estate of the

late Mohamed Kanumgunda) RESPONDENT

RULING

Date of Last Order: 03/10/2023

Date of Delivery: 13/10/2023

MATUMA, J.

The applicants herein have filed this application praying for this court to grant them leave to appeal to the Court of Appeal against the decision of this court in Land Appeal No. 23 of 2021.

The application is made under Section 47 (2) of the Land Disputes Courts Act, Cap 216 R.E 2019 and supported by an affidavit sworn by Flavia Francis the learned advocate representing the applicants.

When the application came for hearing, the applicants were all represented by Ms. Flavia Francis learned advocate while the respondent was represented by Mr. Kelvin Kayaga learned advocate.

In her submissions, the learned advocate for the applicants adopted the contents of her affidavit as part of her submission and averred that this case started at the District Land and Housing Tribunal as Land Application no. 70 of 2019 and the applicants were victorious but on appeal to this court by the Respondent, they were adjudged losers.

She further argued that the impugned judgment has legal issues which ought to be determined by the Court of Appeal as narrated under paragraph 7 of the affidavit to wit;

- i) Whether the respondent who instituted the case at the trial tribunal sued a legal person.
- ii) Whether the trial tribunal had jurisdiction to entertain the suit which was time barred.

The learned advocate submitted that on the first issue as to whether the respondent sued a legal person at the trial tribunal, on the context that the the 2nd and 3rd applicants bought the suit land from the mother of the 1st applicant. However, the said mother of the 1st applicant or even her legal representative was not made party to the case. She therefore contended that the none joinder of the said 1st Applicant's mother is a legal issue worth to be determined by the Court of Appeal.

Without wasting time, I join hands with Mr. Kelvin Kayaga learned advocate for the Respondent against the applicants on the first issue. As rightly argued by Mr. Kayaga, the learned advocate for the applicant argued the first issue contrary to the contents of the issue itself under paragraph 7(a) of the applicant's affidavit. The issue is whether the

Respondent sued a legal person but the argument made on it is none joinder of parties. In that respect the applicants are not even certain on whether their complaint against the impugned judgment is against the Respondent to have sued the party who is not a legal person or for him to have not joined the first applicant's mother as a seller of the dispute land.

It should be understood that in an application for leave to appeal what is required for this court to determine is whether or not the decision sought to be challenged on appeal raises any legal point deserving consideration by the Court of Appeal. See the case of ***Rweyemamu Constantine & Others vs Uwamateda Group & Another, Civil Application 563 of 2019*** CAT.

Leave cannot be granted on uncertain complaint by the applicant. Not only that but also, even if we would have to consider that the complaint is none joinder of parties as purportedly argued by Ms. Flavia learned advocate, it is my firm finding that the record at hand show that it was the 1st Applicant himself who raised allegations that it was his mother who sold the suit land to the rest Applicants. That was not the fact from the respondent. In that regard the issue couldn't be none joinder but third-party notice and it was the Applicants themselves to call in the suit the alleged vendor. The respondent had nothing to do with the alleged first applicant's mother and that was not the matter before both courts. The first issue is therefore rejected and leave thereof denied.

In regards to the second issue regarding jurisdiction, I find the same to have been brought as a fishing ground. The learned advocate argued it as a preliminary issue but the court of appeal do not deal with preliminary issues that ought to have been dealt by the subordinate courts

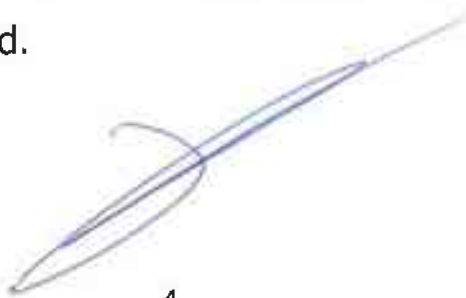
thereto. The learned advocate argued the ground raising the question as to when the cause of action arises in respect of the deceased's estate.

I am in agreement with Mr. Kayaga with the authority he cited that of ***Tanzania Breweries Limited versus Herman Bildad Minja, Civil Application No. 11/18 of 2019***, that the applicants' affidavit contains hearsays in respect of the mater. Cause of action would arise from the date of the demise of the deceased if at the time of death there was already a dispute. But if upon the demise of the deceased, his estate is at peace for years, the cause of action would arise when the deceased's family is interfered with the peaceful enjoyment of the estate in question.

I therefore agree with Mr. Kayaga that the issue of time limitation was conclusively dealt by this court and there is nothing worthy on it to be referred to the Court of Appeal. Being guided by the Court of appeal itself as held in the case of ***Harban Haji Mosi and Shauri Haji Mosi versus Omar Hilal Seif and Seif Omar, Civil Reference no. 19 of 1997*** that;

1. *"Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceedings as a whole reveal such disturbing features as to require the guidance of the Court of appeal".*
2. *"The purpose of the provision is therefore to spare the court the specter of unmeriting matters and to enable it to give adequate attention to cases of the public importance"*

I deny this application for want of any merit. It stands dismissed with costs. It is so ordered.





MATUMA
JUDGE
13/10/2023

COURT: Ruling delivered in the presence of Mr. Amos Gahise holding brief of Ms. Flavia Francis advocate for the applicants and absence of the respondent.



MATUMA
JUDGE
13/10/2023