

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MBEYA SUB REGISTRY**

**AT MBEYA**

**MISC. LAND APPLICATION No. 22 OF 2023**

*(Originating from, Misc Land Application No. 112 of 2020, Misc. Land Application No. 14B of 2017 of the District Land and Housing Tribunal for Mbeya at Mbeya and from Application No. 14 of 2017 of the District Land and Housing Tribunal for Mbeya at Mbeya)*

**HONOLE ALPHONCE MWITA** (*Administrator of Estate of late Alphonse Mwita*).....**APPLICANT**

**VERSUS**

**PAPAYAI KALOYA**.....**RESPONDENT**

**RULING**

*25<sup>th</sup> October & 10<sup>th</sup> November, 2023*

**MPAZE, J.:**

This ruling is on an application for leave to appeal to the Court of Appeal. It is made under sections 47(1) of the Land Disputes Courts Acts, [Cap 216 R.E 2019] and 5(1) (c) of the Appellate Jurisdiction Act [Cap.141. R.E.2019] by way of a chamber summons supported by an affidavit sworn by Honela Alphonse Mwita, the administrator of the estate of the late Alphonse Mwita.

The leave sought is against the ruling of this court delivered on 19<sup>th</sup> December, 2022 in Misc. Land Application No. 112 of 2020 in

favour of the respondent. This application was preceded by a notice of appeal lodged on 6<sup>th</sup> January, 2023.

The brief facts according to the record and applicant's affidavit are that the respondent sued the applicant in Misc. Land Application No. 14 of 2017 of the District Land and Housing Tribunal for Mbeya (DLHT) claiming to be declared lawful owner of the disputed land, on 22<sup>nd</sup> November, 2017 the (DLHT) entered *ex-parte* judgment in the favour of the respondent.

When the applicant became aware of this decision applied to set aside *ex-parte* judgment through Misc. Application No. 14B of 2017 which was dismissed for lack of merits. Following the dismissal of an application of setting aside *ex-parte* judgment, the applicant did not give up, he came to this court this time with an application for an extension of time to lodge an appeal out of time.

The application was brought under section 47(2) of the Land Dispute Courts Act, Cap 16 R.E 2019. In its ruling dated 19<sup>th</sup> December, 2022 this court dismissed the application with costs. The applicant now seeks to impugn the ruling of this court, hence this application for leave to appeal to the Court of Appeal.

When the hearing of this application was called, the applicant was represented by Mr. Philip Mwakilima, learned Advocate, while the respondent appeared in person.

Mr. Mwakalima adopted the contents of the affidavit deposed by Honole Alphonse Mwita and urged the court to grant leave to appeal to the Court of Appeal as there are contentious issues that need to be determined by the Court of Appeal. He said the contentious issues have been laid down under paragraph 12 of the applicant's affidavit.

On his part, the respondent was firm that the ruling delivered by this court was fair and just and did not need any interference from the Court of Appeal. He added that in this application the applicant added another ground of time-barred which was not dealt with by this court when dealing with an application for extension of time.

In his rejoinder, Mr. Mwakilima insisted that for justice, the court should grant leave, as the decision of the trial tribunal is blemished with illegalities which the same cannot be left to stand as stated in paragraph 12 of the applicant's affidavit.

The applicant's counsel admitted the issue of time-barred was not raised in the application for extension of time. however, he was quick to point out that the issue touches the jurisdiction of the court and hence can be raised at any stage of the case and that is what he did.

I have considered the arguments of both parties. However, before embarking on deliberating the application. I find it necessary first to adjudicate the legal point which I raised *suo motto* on 6<sup>th</sup> November, 2023 regarding whether the application is within the time.

Addressing the court when invited, Mr. Mwakalima for the applicant, submitted that the application is within the time as immediately after the ruling has been delivered on 19<sup>th</sup> December, 2022, they wrote a letter to the Deputy Registrar's office requesting copies of Proceedings, Ruling and Order a copy of the letter was also served to the respondent.

Applicant's counsel added that, On 12<sup>th</sup> April, 2023 they received a notification letter for the collection of the said documents which was preceded by a certificate of delay from the office of the Deputy Registrar. Thus, this application was filed on 8<sup>th</sup> May, 2023.

On top of that, Mr. Mwakalima contended that appealing is a process, which they managed to follow, and as per section 19(2) of the Law of Limitation Act, Cap 89 R.E 2019, the time they were waiting to be provided with those documents should be excluded since they would not have been able to bring forth this application without having a copy of ruling and drawn order.

To cement his argument that an appeal is a process he cited the case of **Thobias Paschal Mwacha(as the administrator of the estate of the late Paschal Mwacha) v. Access Bank Tanzania Limited & Another**, Civil Application No. 35/01 of 2021. CAT (unreported), With this submission, Mr. Mwakilima asked this court to find out that the application is within time.

On the other hand, the respondent was so brief, he contended that, the application was out of time as on his side he was supplied with a copy of the ruling on the same day when it was delivered. He wondered where was the applicant all that time, and why he failed to make any efforts to the Deputy Registrar's office or write a reminder letter when he found the responses were delayed. He asked the court to find the application was out of time.

In his rejoinder, Mr. Mwakilima reiterated his earlier submission, adding that if the respondent knew the application was out of time, he could have been the first one to raise this issue in his counter affidavit but he did not do so, either on the date of hearing he did not raise this issue, as such he insisted the application is within the time.

From the submission of the parties, the question is whether the application at hand is within time. Rule 45 of The Court of Appeal rules provides;

*"Every application for leave to appeal shall be accompanied by a copy of the decision against which it desired to appeal and where application has been made to the High Court for leave to appeal by a copy of the order of the High Court."*

Reading this rule, it is clear that the applicant would not have filed this application if he had not been supplied with a copy of the decision against which he desired to appeal against.

Mr. Mwakilima submitted that immediately after the ruling he wrote a letter requesting for copies of proceedings, ruling and order to the Deputy Registrar's office, the copy of that letter was also served to the respondent, this fact was not disputed by the respondent.

Mr. Mwakalima went further that on 12<sup>th</sup> April, 2023 they received a notification letter that copies of the documents applied for are ready for collection. On the same date they collected the documents and a certificate of delay was issued, thereafter on 8<sup>th</sup> May, 2023 this application was lodged.

The respondent admitted he was served with requesting letter of the said documents. There also no dispute that the notification letter was supplied to the applicant on 12<sup>th</sup> April, 2023, with the documents requested together with the certificate for the delay, subsequently, the applicant filed this application on 8<sup>th</sup> May, 2023.

Based on the submission made by the applicant's counsel I am satisfied that the application is within the time.

Reverting to the application at hand, I should state promptly that there is no law which provides for conditions to be considered by the court in granting or refusing an application for leave to appeal to the Court of Appeal. However, through the case law of this court and the Court of Appeal, the position is now settled. See **Citibank Tanzania Limited v. Tanzania Telecommunications Company and 5**



**others**, Misc. Commercial Cause No. 6 of 2003 (unreported), **Gaudencia Mzungu v. IDM Mzumbe**, CAT Civil Application No. 94 of 1999 (unreported) and **British Broadcasting Corporation v. Sikujua Ng'maryo**, Civil Application No. 133 of 2004, which stated;

*"Needless to say, leave to appeal is not automatic. It is within the discretion of the court to grant or refuse. The discretion must, 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.(See: Buckle v Holmes(1926) ALL E.R 90 at page 91), However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted."*

Derived from the decided cases, for leave to appeal to the Court of Appeal to be granted, the applicant must demonstrate serious and contentious issues whether factual or legal or there are grounds of appeal which merit serious intervention by the Court of Appeal.

In the instant application, the applicant has advanced four grounds that he considers to be controversial and worth to be interfered with by the Court of Appeal. The grounds are;

1. That the opinion of the assessors was not read before the parties.

2. That the trial tribunal entertained the matter which was time-barred.
3. That there was improper service of summons of the applicant.
4. Ruling and drawn order of the trial tribunal were not dated when it was signed.

At this stage, it is not within the powers of this court to go into the merits of the impugned ruling, instead of looking at whether the intended appeal primacies' have raised issues of general importance or novel point of law or arguable grounds that need the attention of the Court of Appeal.

In the case of **Harban Haji Mosi & Another v. Omar Hilal Seif & Another** (Civil Reference No. 19 of 1997), published on website, [www.tanzlii.org](http://www.tanzlii.org) [2000] TZCA 11 stated;

*"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. The purpose of the provision is therefore to spare the court spectre of unmeriting matters and to enable it to give adequate attention to cases of true public importance"*

The applicant has advanced two grounds which he intends to raise at the Court of Appeal; **One** is whether this court erred in law for failure to find out the decision of the District Land and Housing Tribunal for



Mbeya in Land Application No 112 of 2017 was tainted with illegalities, **Two**, whether the Land Application No. 112 of 2017 was timed barred.

In consideration of the authorities cited above, I am satisfied the grounds advanced by the applicant sufficiently set out the controversy's issues relating to time-barred which touches on jurisdiction issues and the failure of this court to consider illegalities occasioned in the *ex-parte* Judgement in Land Application No. 112 of 2017.

I, therefore, find the application meritorious I proceed to grant leave to the applicant to appeal to the Court of Appeal. Given the nature of the Application, I make no orders as to Costs.

**Dated at Mbeya** this 10<sup>th</sup> November, 2023.

  
**M.B. MPAZE**  
**JUDGE**

**Court:** Ruling delivered in the presence of the applicant and respondent this 10<sup>th</sup> day November, 2023.



  
**M.B. MPAZE**  
**JUDGE**  
**10/11/2023**