

THE UNITED REPUBLIC OF TANZANIA

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISC. LAND APPLICATION NO 112 OF 2022

**(Arising from the Decision of the High Court of Tanzania at Mbeya in Land
Appeal No. 55 of 2022)**

NATIONAL BANK OF COMMERCE LIMITED.....APPLICANT

VERSUS

NDIMYAKE MPUNJIRESPONDENT

RULING

27 October 2023 & 06 November 2023

SINDA, J.:

The applicant seeks for leave to appeal to the Court of Appeal of Tanzania (the **CAT**) against the decision of this Court (Mongella, J.) in Land Appeal No. 55 of 2022. The application is made under section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2019 (the **AJA**) and Rule 45 (a) of the Tanzania Court of Appeal Rules of 2009 (the **TCAR**). The application is supported by the sworn affidavit of John Ignace Laswai, counsel for the applicant. The respondent did not file an affidavit in reply to oppose the application.

The brief facts of the matter are on 17 November 2020 the applicant suffered Judgment in Land Application No. 120 of 2016 at the District Land

and Housing Tribunal at Mbeya (the **Trial Tribunal**). On 30 November 2020, the applicant requested to be supplied with certified copies of the proceedings, judgment and decree for appeal purposes. The applicant was not supplied with the certified documents despite repeated follow-ups. This prompted the applicant to write reminder letters to the Trial Tribunal on 9 March 2021 and 9 June 2021.

The applicant continued to make follow-ups and on 18 May 2022, the Judgment and decree in Land Application No. 120 of 2016 were supplied to the applicant. The applicant was then surprised to learn that the judgment and decree were certified and signed by the Honourable Chairman on 27 July 2021, while the applicant was always told that these documents were not ready. The Land Appeal No. 55 of 2022 was lodged to this Court on 30 June 2022. The respondent raised a preliminary objection that the appeal was time-barred. On 2 December 2022, this Court delivered its ruling in favour of the respondents and dismissed the appeal. Hence, this application.

The applicant's grounds for leave are reproduced hereunder:

1. Whether it was proper and appropriate for the Court to assume that Land Appeal No. 55 of 2022 was time-barred by counting the forty-five (45) days from the date on which the said judgment and decree appealed was certified by the Trial Tribunal, i.e., 27 July 2022, while the same was supplied and made available to the applicant on 18 May 2022; and

2. Whether it was just and appropriate for the Court to hold that the appeal is time-barred, while it is clear that in counting the forty-five (45) days' period of limitation within which the applicant ought to have filed her appeal against the decision of the Trial Tribunal of 17 November 2020, the period in which the applicant was waiting for preparation and delivery of these documents are excluded.

When the matter came for hearing of this application on 27 October 2023, only the applicant appeared represented by Mr. John Ignace Laswai, learned advocate. In the interest of justice, the matter was decided to be heard ex parte against the respondent.

Mr. Laswai prayed for the Court to adopt the contents of his affidavit as part of his submission and urged the Court to grant the leave.

In his submission, Mr. Laswai argued that the general issue that the CAT is entitled to investigate is whether this Court was correct in holding that Land Appeal No 55 of 2022 was time-barred by counting forty-five (45) days from the date on which the judgment and decree appealed from was certified by the Trial Tribunal on 27/7/2021 while the judgment and decree were supplied to the applicant on 18/5/2022. He added that the applicant wants the CAT to determine whether it was proper and appropriate for this Court to ignore the fact that from 17 December 2020, when the decision subject to appeal was made by the Trial Tribunal, to 18/5/2022, when the decree and judgment were supplied, to the applicant, this period ought to be excluded.

It was Mr. Laswai argument that it is a laid down principle in the case of ***Amie Sadick Sanga vs. National Bank of Commerce Limited*** Civil Application No. 105/17 of 2021 (CAT, Dar es Salaam, unreported) that an applicant cannot be aware and act upon the documents been requested by the Court without being aware that the appeal documents are ready for collection so that he can file his appeal. That time will start to run against the appellant from the date of receipt or supply of the documents by the Court.

To support his arguments, he referred to ***British Broadcasting Corporation vs Erick Sikujua Ng'maryo***, Civil Application No. 138 of 2004 (CAT at Dar es Salaam, unreported), ***Rutagatina C.L vs The Advocates Committee & Clavery Mtindo Ngalapa***, Civil Application No. 98 of 2010 (CAT, Dar es Salaam, unreported), ***Nicomedi Peter Fulgence Vs. Protus Fulgence Niima***, Misc Civil Application No. 58 of 2020 (High Court, at Arusha, unreported) and ***Simon John Ngalesoni vs. Father Velemir Tomiso***, Civil Application No 95 of 2022 (High Court, at Arusha, unreported).

I have considered the instant application, the grounds in support thereof, the affidavit sworn by the applicant's counsel and his submission, the record of this application and the law. Section 5 (1) (C) of the Appellate Jurisdiction Act Cap. 141 R.E 2019 (the **AJA**) provides as follows:

"5 (1) (C) In civil proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal with the leave of the High Court or of the Court

of Appeal, against every other decree, order, judgment, decision or finding of the High Court."

The applicant invokes the foregoing provisions of the AJA and seeks leave to appeal to the CAT. This Court has been moved to determine whether the arguments raised by the applicant are worth consideration by the CAT.

It is settled law that leave to appeal to the CAT is granted only when the intended appeal has some factual or legal merits. See ***British Broadcasting Corporation vs Erick Sikujua Ng'maryo***, (supra) ***Rutagatina C.L vs The Advocates Committee & Clavery Mtindo Ngalapa***, (supra), ***Lightness Damian & Others vs Said Kasim Chageka***, Civil Application No. 450/1 of 2020 (CAT at Dar es Salaam, Tanzlii) and ***Jireys Nestory Mutalemwa vs Ngorongoro Conservation Area Authority***, Civil Application No 154 of 2016 (CAT at Arusha).

The CAT gave the test for granting leave to appeal to the CAT in the case of ***Lightness Damiani and 5 Others vs Said Kasim Chageka*** (supra), whereby it stated that:

*"In the light of the above stance of the law, and with respect to the learned judge, it seems clear to us that all that applicants are required to do in applications of this kind is **simply to raise arguments whether legal or factual which are worth of consideration by the Court**. Once they pass that test, the court*

is obligated to grant leave to appeal. It is not the duty of the judge to determine whether or not they have any merit."

In the case of ***British Broadcasting Corporation vs Erick Sikujua Ng'maryo***, (supra) the CAT stated 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 judiciously exercised and on the materials before the court. As a matter of general principle, **leave to appeal will be granted where grounds of appeal raise issues of general importance or a novel point of law or where the grounds show a prima facie arguable appeal** (see: ***Buckle vs Holmes*** (1926) ALL ER. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted."*

In the case of ***Jireys Nestory Mutalemwa vs Ngorongoro Conservation Area Authority*** (supra), the CAT further stated that:

"Similarly, in applications of this nature, it is a well-established principle of law that the Court is not expected to determine the merits or otherwise of the substantive issues before the appeal itself is heard..."

The issue for consideration now is to determine whether or not the arguments raised by the applicant in support of the application for leave to appeal to the CAT are pertinent questions for determination by the CAT and meet the conditions explained in the cases above.

I have analysed the grounds of appeal raised, particularly under paragraph ten (10) of the affidavit and the brief submission of Mr. Laswai. I believe the present application raises matters worth considering by the CAT as established in the cases mentioned above.

The application is merited. I therefore grant leave to appeal to the CAT. No order as to cost is made.

DATED at MBEYA on this 06th day of November 2023.

A. A. Sinda
A. A. SINDA
JUDGE

The Judgment is delivered on this 06th day of November 2023 in the presence of the applicant represented by Mr. Alfredy Chapa.



A. A. Sinda
A. A. SINDA
JUDGE