

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
KIGOMA SUB-REGISTRY  
AT KIGOMA**

**MISC. LAND APPLICATION NO.27 OF 2023**

**HAMIS MDIDA.....1<sup>st</sup> APPLICANT  
SAID MBOGO .....2<sup>nd</sup> APPLICANT**

**VERSUS**

**THE REGISTERED TRUSTEES OF ISLAMIC FOUNDATION.....RESPONDENT**

**(From the decision of this Court)**

**(Magoiga J)**

**dated 5<sup>th</sup> May 2023**

**in**

**Misc. Land Application 31 of 2022**

**RULING**

26<sup>th</sup> October & 3<sup>rd</sup> November 2023

**Rwizile, J.**

The applicants have an intention to appeal to the Court of Appeal. They have therefore applied for leave to appeal to the Court. The application is made in terms of section 47(2) of the Land Dispute Courts Act [Cap 216 RE 2019]. The background information behind this case is that this court on 5<sup>th</sup> May 2023, struck out the application for revision preferred by the applicants against the order of the tribunal that dismissed a preliminary objection filed by the respondent in Misc. Land Application No.97 of 2022.

The affidavit supporting the application has advanced four major points which, if this application is granted, the Court of Appeal has to determine. They are averred under paragraph 9 of the affidavit supporting this application as shown hereunder;

- i. The learned judge has wrongly applied the general law instead of the specific law in determining the subject matter of the dispute and has caused a miscarriage of justice
- ii. The learned judge wrongly and illegally limited the supervisory powers of the High Court over the proceedings of the District Land and Housing Tribunal to proceed with determining the finality of the dispute against the dictates of the law
- iii. The High Court upheld the decision of the District Land and Housing Tribunal without justification and in a miscarriage of justice
- iv. That the High Court's decision to uphold proceedings of the District Land and Housing Tribunal which lacks jurisdiction is unfounded.

Mr. Kelvin Kayaga represented the applicants, while the respondent was represented by Mr. Kabuguzi, both learned advocates.

Mr. Kayaga submitted that it was not proper for the High Court to apply the general law while there is a specific law. This according to him, creates two positions of the law in one matter.

It was his further submission that the judge limited the revisional powers of the High Court which is not legally correct. In support, he referred to the case of **Erastus Ngailo vs Blastus Allen Mgimwa**, Misc. Land Application No. 15 of 2022. He argued that the powers of the High Court on revision are not limited to the proceedings that come to finality.

Mr. Kayaga was of the submission that, the application before this court was from the decision of the tribunal overruling an objection on its jurisdiction in execution proceedings that were conducted in a duplicate file while there was a notice of appeal. In his view, the tribunal had no such powers and so believed the applicants had a good and arguable matter before the court of appeal. The court was therefore asked to grant the application.

Resisting the application, Mr. Kabuguzi advocate for the respondent submitted that the application be dismissed because it was instituted in bad faith designed to waste time. According to him, the applicant aims to prevent the respondent from enjoying the fruits of the judgment.

To him, since the application before the tribunal was not heard on merit, it is therefore unjustified to appeal, since the applicant has the forum to be heard not at that stage. He lastly said, that since the appeal deals with the rights of the parties, there was no need to appeal. I was asked to dismiss this application with costs.

Having been familiar with submission for and against the application by the parties. The issue is whether this application is subject to leave to the court of appeal. The reasons upon which leave may be granted are explained in the case of **British Broadcasting Corporation vs Eric Sikuja Ng'wamaryo, (CAT)**, Civil Application No. 138 of 2004, on pages 6-7 it was thus said;

*"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".*

The point to be determined here apart from having the arguable case, as in the submissions, is if the decision to be challenged is made in an interlocutory order.

It has been stated by the respondent that, in Misc. Land No. 97 of 2022, the tribunal dismissed the objection on the jurisdiction of the tribunal to execute the decree before it. This court when dismissing the

application intended to be challenged was of the view that that decision was an interlocutory one and therefore not subject to appeal. The laws cited are section 43(1)(b) of the Land Disputes Court Act and section 79(2) of the CPC. Mr. Kelvin was plain in his submission and did not say the same is not from an interlocutory order. What he argued with vigor is that revision to this court from the subordinate tribunal can be done at any time it does not matter if the proceedings are interlocutory or not.

With respect to Mr. Kelvin's argument, I am settled in my mind that there is nothing pointed out that needs determination by the Court. This application as submitted by Mr. Kabuguzi is designed to waste time and has no legal backing. I am saying so because it is legally settled that the trial court or tribunal has powers to execute its orders. Mr. Kayaga did not show any conflicting decisions of this court that need pronouncement by the Court. I do not think, when a party feels aggrieved by any decision of this court or any court subordinate to it, has the right to go to the Court without first exhausting all remedies available. In my considered view, I find no reason to grant this application. It is hereby dismissed with costs.



**ACK. RWIZILE**

**JUDGE**

**03.11.2023**