

**IN THE HIGH COURT OF TANZANIA
(BUKOB DISTRICT REGISTRY)
AT BUKOB**

MISC. LAND APPLICATION No. 46 OF 2023

(Arising from the Decisions of the High Court of Tanzania at Bukoba in Misc. Land Application No. 20 of 2023 and Land Appeal No. 80 of 2021, Originating from the Decision of the District Land and Housing Tribunal for Karagwe at Kayanga in Land Application No. 111 of 2021)

ZULPHA KHASIM APPLICANT

VERSUS

SUDI AMRI RESPONDENT

RULING

14th November & 15th December 2023

OTARU, J.:

The applicant is dissatisfied with the decision of the High Court of Tanzania at Bukoba in Misc. Land Application No. 20 of 2023 dated 26th May 2023, of dismissing her application to re-admit Land Appeal No. 80 of 2021 dismissed for want of prosecution. The applicant is therefore seeking for leave of this court under section 47(2) of the **Land Disputes Courts Act**, (Cap. 216 R.E. 2019) and Rule 45(a) of the **Court of Appeal Rules** (G.N. 362 of 2017) so she would appeal to the Court of Appeal of Tanzania against the impugned decision.

The application is supported by Affidavit deposed by Zulfa Khasim, the applicant herein. The respondent strongly opposed the application via the counter-Affidavit sworn by Abel Eustad Rugambwa, learned Advocate.

At the hearing of the application, the applicant was represented by one Grace Andrew Malaki as an attorney and agent of the applicant. The respondent enjoyed the services of Mr. Josephat Rweyemamu, learned Advocate who also represented the respondent in previous matters. Hearing of the application was by way of oral submissions.

When invited to submit in support of the application, Ms. Malaki begun by claiming that Ms. Zulfa was sick when Land Appeal No. 80 of 2021 was called on for hearing and eventually dismissed for non-appearance of the applicant. She further claimed that the court in determining Misc. Land Application No. 20 of 2023 considered reasons outside the sickness that have been submitted by the applicant, thereby denying her the right to be heard on that aspect. She claimed that the court held that execution was already effected while none of the parties introduced that issue. Finally, she claimed that the court wrongly concluded that her Affidavit contained lies because she used electronic means of signing the Memorandum of Appeal which appears to have been signed at Karagwe during the period she was supposedly attending clinic at Muhimbili Medical Hospital, Dar es salaam.

Mr. Rweyemamu in opposing the application argued that what the applicant is doing is an abuse of court process because what was to be challenged through Land Appeal No. 80 of 2021 was the application for execution which in fact has

already been effected and concluded. He thus prayed for the application to be dismissed with costs.

Having heard the rival parties' submissions for and against the application, my task is centered on the question whether the application demonstrates sufficient ground is or a disturbing feature is that require attention of the Court of Appeal of Tanzania. The issue is based on the settled position that grant of leave to appeal to the Court of Appeal is not a matter of mere formality. The party seeking to be granted leave must demonstrate, with material sufficiency, that the intended appeal carries an arguable case that merits attention of the Court of Appeal. An application can be allowed if prima facie grounds are meriting the attention of the Court of Appeal. This position has been discussed in the case of **Sango Bay v Dresdner Bank A.G.** [1971] EA 17, which is still good law today, that:-

'Leave to appeal will be granted where prima facie it appears that there are grounds which merit serious judicial attention and determination by a superior court.'

The main reason that Misc. Land Application No. 20 of 2023 was dismissed was that execution of the order intended to be challenged was already effected. The applicant does not deny this fact. She merely argues that it was outside the pleadings and the parties were not given opportunity to address that issue. The relevant paragraphs in the Affidavit supporting the application read as follows:-

6. *'That the ruling given vide Misc. Land Application No. 20 of 2023 shows clearly that **the court** did not acquaint itself with the application before it and it **allowed miscellaneous issues not related with the intended application to move it, the fact which was not proper.** That the court went on dismissing the application for restoration **without hearing the real question** intended, hence affecting the rights of the applicant.*
7. *That the applicant stands believing that she had a reasonable cause for which her case would be restored, but the same was dismissed without her **being properly heard**, and that her application was not considered basing on the reasons which **she had provided but the court was misled by long history of the case**, which had nothing to do with the said application'. [Emphasis provided]*

As stated earlier, I have gone through the case record. The record indicates that on 18th May 2023, during the hearing of the application, Mr. Rweyemamu informed the court that the execution order sought to be challenged had already been effected and the report was filed as required. The applicant had the opportunity to respond to that issue and she did. She said *'during execution, I was not present although I was notified about the would-be execution.'*

The court proceeded to determine the matter. It based its decision on the observation it made from court records which indicate that execution was effected on 8th October 2021 via Misc. Application No. 111 of 2021.

In Misc. Application No. 111 of 2021 the applicant had filed an objection to execution. The matter was adjourned more than once, to wit, on 20th July 2021 and 15th September 2021 to enable the applicant attend court and argue her objection, yet she did not. Neither did she submit evidence of her being referred to Muhimbili National Hospital, as alleged. On 23rd September 2021 her objection was dismissed. Subsequently, Ivenico Auction Mart and Court Brokers were appointed to execute the Decree in favour of the respondent. The report was filed on 8th October 2021. The record indicates that the applicant was well aware of what was going on. The same is evidenced by her own statement when she rejoined that '*during execution, I was not present **although I was notified about the would-be execution***'.

Examining closely what the applicant has raised, evidently, she is misdirecting the court to believe that she has a triable issue. While the mere fact that execution has already been effected is enough ground to deny the application. The record speaks for itself. The issue that execution was effected was raised by the respondent's counsel and both parties had an opportunity to address the court on it. Having heard both parties, the court held that *once*

execution is complete no appeal or application challenging its order can be entertained. It relied on the case of **Tanzania Building Works Ltd v Kamaka Co. Ltd**, Misc. Civil Application No. 202 of 2020 (CAT) where it was held that;-

'Since the application has already been overtaken by events as execution has already taken place, I accordingly order the application to be struck off the register as it serves no intended purpose save as an academic exercise.'

In the final analysis, I have satisfied myself that execution of the Decree has been conclusively effected and the applicant has been fully involved in the process. Consequently, the application does not demonstrate sufficient ground/s or a disturbing feature requiring the attention of the Court of Appeal of Tanzania. In fact, there is nothing capable of being challenged before the Court of Appeal. Thus even going to other reasons will be a futile exercise.

Therefore, leave to appeal to the Court of Appeal is not granted. The respondent is to be reimbursed his costs in respect of this application.

DATED at BUKOBA this 15th day of December, 2023.



M.P. Otaru
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JUDGE