

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPLICATION NO. 960 OF 2017

DAVID NABURI *as the Administrator of the
estate of the late Maeda Naburi (the deceased)* **APPLICANT**

VERSUS

STEPHEN SANGU **RESPONDENT**

RULING.

S.M. MAGHIMBI, J:

The application beforehand is for leave to appeal to the Court of Appeal against the whole Ruling and Drawn Order of this Court in Misc. Land case Application No. 815/2016 dated 17th October, 2017. The Chamber Summons was supported by an affidavit deposed by applicant on the 31st day of October, 2017.

As per the records of this application, the background of this application is that the current Applicant is the legal representative of the Late Maeda Naburi who died on 26th October, 2015. Before his death, the late Maeda Naburi was the Respondent in Land Application No.24 of 2017 before the Kinondoni District Land and Housing Tribunal at Mwananyamala which ended in favor of the respondent herein. The applicant's attempts to lodge an appeal in this court proved futile when the court dismissed his application for extension of time to appeal for want of sufficient reasons.

Dissatisfied by the said dismissal of his application, the applicant has lodged the current application under the provisions of Section 47(1) of the Land Disputes Courts Act, Cap. 216 R.E 2002 and Rule 45(b) and 49(3) of the Court of Appeal Rules, 2009 seeking for leave to appeal to the Court of Appeal against the dismissal order of this court.

By an order of the court dated 01/03/2019, the application was disposed by way of written submissions. Both sides filed their submissions accordingly hence this ruling. I must point out that in due course of writing this ruling, I have noted that in their submissions, both parties banked much on the arguments of the merits of the intended appeal, the applicant attempting to justify his reasons of delay to appeal against the decision of the tribunal and the respondent supporting the reasons for the decision of this court dismissing the said application. Since the reasons for the delay did not satisfy this court and were dismissed on the 17/10/2017, I will not consider those submissions whether to fault or support the said decision as at this point I am functus officio.

Going to the substance of the application for leave, Mr. Ndanu submitted that the Applicant is dissatisfied by the ruling of this court and he intends to challenge it at the Court of appeal of Tanzania but the law requires the applicant to obtain leave from this court to certify that indeed there is an issue worth determination of the court of appeal hence this application before you. That the issues of law which need attention and determination by the court of appeal are: -

- (i) Whether there was reasonable ground for the Applicant in delay to file the Application for extension of time

- (ii) Whether it was proper for the Honorable Tribunal to deny chance for the Applicant to defend himself
- (iii) Whether it was proper for the Tribunal to concluded the matter without considering the document/ evidence it ordered to be supplied with the original document
- (iv) Whether it was proper for the Honorable Tribunal to award the Respondent Tshs. 35,000,000/= without any proof
- (v) Whether it was proper for the Honorable Tribunal to deliver Judgement in the absence of the Applicant without any notice.

He then cited the case of **(i) Harban Haji Mosi & Another Vs. (i) Omar Hilal Seif & Another, Civil Reference No. 19/1997** (unreported) where the court had this to say;

"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 the specter of unmeriting matters and to enable it to give adequate attention to cases of true public importance."

He submitted further that the above cited case was quoted with approval in the case of **British Broadcasting Corporation Vs. Eric Sikujua Ng'maryo Civil Application No. 138 of 2004** (unreported). Mr. Ndanu submitted further that the Applicant's intended appeal has reasonable chances of success whereby he again submitting before me the arguments which ought to be submitted at the appellate court hence will not be discussed at this point. He then cited the case Of **Insignia Limited**

Versus Commissioner General, Tanzania Revenue Authority, Civil Application No. 2 Of 2007 (Unreported) the court of appeal held that in an application for extension of time the chances of success need not necessarily be shown.

He further cited the case of **VIP Engineering and Marketing Limited and here Others vs. Citibank Tanzania Limited, Consolidated Civil Reference No. 6,7 and 8 of 2006 CA** (Unreported) the court of Appeal stated that;

"We have already accepted it as established law in this country that where the point of law at issue is the illegality or otherwise of the decision being challenged that by itself constitutes "sufficient reasons "within the meaning of rule 8 of the Rules for extending time"

I think by citing the VIP case, Mr. Ndanu is contradicting himself with the case cited himself of **INSIGNIA LIMITED (Supra)** where the court emphasized on the distinction between extending time.

Mr. Ndanu submitted further that it's the a principle of law that application of this nature should be allowed where there are issue of law to be looked upon by the higher court, this principle is stated in the case of **Simon Kabaka Danlel Vs. Nyang'anyi & 11 others TLR [1989] No.64** and also in the case of **Said Ramadhan Mnyanga Vs. Abdallah Salehe TLR [1996] No.74** .That in these cases, the Court stated that leave to appeal is granted only where the matter raises contentious issues of law and is a fit case for further consideration by the Court of Appeal. He hence submitted that all issues raised by the applicant in the affidavit in support

of this application particularly at Paragraph 11 raises serious contentious issue of law which needs consideration by the court of Appeal, therefore we pray that this application be granted to allow substantive justice to prevail to both parties.

In reply, Mr. Pongolela submitted that the test which has been used for a long time is whether the appeal has reasonable prospect of success or whether the applicant has arguable case once leave is given to appeal. As for the cited case of **British Broadcasting Corporation Vs. Eric Sikuja Ng'imayo**, Mr. Pongolela also dived into arguing the appeal by analyzing the decision of this appeal in which leave is sought for hence I will not discuss those arguments. He submitted further the case of BBC the judge dismissed the case for failure to prosecute while such is not the case in this application while the application subject of this application was for extension of time and was decided on merits. That in the intended appeal there will be no room for fresh evidence or opening new issues but only the proceedings on record will be determined.

Mr. Pongolela submitted further the applicant has failed to point out the illegalities in the decision of the court and that he had a duty to point out the illegalities. He concluded that the applicant has failed to show any prima facie case or any arguable case to warrant him leave to appeal to the court of appeal. He prayed that the application is dismissed with costs.

I have considered the parties' submissions for and against the application. On my part I have considered two issues; the first one is that an appeal is a right of a party against the decision of a court which is appealable. However, in granting leave, the decision that an appeal is sought for must

not only be appealable by law, there must be valid grounds (as opposed to chances of success) that the party wishes to appeal against. As for the current application, I see that the appellate has established grounds of appeal which call for the attention of the Court of Appeal.

The second ground is the fact that an appeal being a matter of right, since the decision that is to be appealed is of a single court, the appellant has a right to present a case at an appellate body to re-determine the ground of which the applicant moved the court at the first instance and see whether the trial court's decision was proper. It is on those grounds that this application is allowed. Leave is hereby granted for the applicant to appeal to the Court of Appeal against the decision of this court in Misc. Land Application No. 516/2016. Costs shall follow cause.

Application Allowed

Dated at Dar es Salaam this 12th day of September, 2019

A handwritten signature in black ink, appearing to be 'S.M. Maghimbi', is written over a horizontal dotted line.

S.M. MAGHIMBI

JUDGE