

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

MISC LAND APPLICATION NO.172 OF 2019

*(Originating from the decision of Hon. Mgonya J, of the High Court of Tanzania,
Land Division in Misc. Application No 450 OF 2017, dated 1st March, 2019)*

ABDALLAH JUMA KULAVA..... APPLICANT

VERSUS

FAUSTINE GISI KAZINZARESPONDENT

RULING

OPIYO, J.

The applicant approached the High Court under section 47(2) and (3) in 2017, seeking among others for leave to appeal to the Court of Appeal of Tanzania against the decision of Hon. Mgonya J, in Misc. Land Case Application No 450 OF 2017, dated 1st March, 2019 and on the certification that there is a point of law for determination by the Court of Appeal. The application is supported by the affidavit of the applicant. The respondent filed a counter affidavit to oppose the application. On date of hearing, both parties were represented by advocates. Musa Muhoja, learned counsel, appeared for the applicant and Mr. Abdul Aziz Bais represented the respondent. Hearing of the

application was done orally. The parties prayed both the affidavit and counter affidavit be adopted to form part of the application.

Submitting for the applicant, Mr. Mhoja contented that, there are two points of law that needs certification of this court to be determined by the court of Appeal of Tanzania as follows:-

1. Whether the High Court was correct in holding that the grounds of illegality and irregularity of the decision of the lower court could not be tabled as sufficient cause for extension of time.
2. Whether the prayer of illegality cannot be raised in an application for extension of time.

Mr. Mhoja maintained that, because the case originated from the Ward tribunal, the requirement of the law is that, a certificate on a point of law from this court is mandatory for a person to appeal to the Court of appeal. Therefore this application should be allowed.

In the reply submission, Mr. Bais contended that the application has no merits because there is no any likelihood of success in the intended appeal before the Court of Appeal of Tanzania. This court should save the Court of Appeal's time by not allowing this application as it is baseless. It should therefore be dismissed with costs.

In his rejoinder, Mr. Mhoja insisted that, the Advocate for the respondent in his reply submissions responded to nonexistent issues which were not submitted in the submissions in chief. The Advocate for the respondent argued on the substance of the intended appeal instead of raising any objections against the application like for example, there are no points of law worth determination by the Court of Appeal. Since the points of law raised in the submission in chief remain unchallenged then this application should be allowed.

This court having considered the submissions of parties through their respective Advocates, now will determine the merit or otherwise of the application at hand. The records at hand show that, the intended appeal is against the decision of L.E Mgonya J, in Misc. Application No.450 of 2017 delivered 1st march 2019 in which the court denied his application for extension of time to file his appeal in this court out of time. The court of appeal have given good reference in such applications, application for leave, where they have stated underlining principle for granting the same in the case of **Harban Haji Mosi and Another v Omar Hilal Seif and Another, Civil Reference No. 19 of 1997 (unreported)**. They stated that:-

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

Again the Court of Appeal in the case of **British Broadcasting Corporation v Eric Sikujua Ng'maryo**, Civil Application No. 133 of 2004 (unreported) stressed the same in the following words:-

*"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 be judiciously exercised 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 a novel point of law or where the grounds show a prima facie or arguable appeal (see: **Buckle v Holmes** (1926) ALL E.R. Rep. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted."*

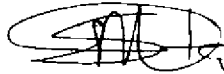
It is a well settled law that, in an application for leave like the one at hand the first point of consideration is whether there is arguable point to be determined by the court of appeal. In the application at hand, it is submitted that, what the applicant intend to table before the court of appeal is determination whether the High Court was correct in holding that the grounds of illegality and irregularity of the decision of

the lower court could not be tabled as sufficient cause for extension of time and whether the prayer of illegality cannot be raised in an application for extension of time. It is undisputed that the main case from which this application had the genesis from the ward tribunal of Korogwe. However the application before judge Mgonya was not on the substantive dispute but rather, a mere application for extension of time to bring appeal on the substantive matter out of time. In my view, this makes it like a fresh matter before the High Court as it determined the issue of extension of time for the first time. Thus, the desired appeal is the first appeal on the denial of extension of time by this court. In the circumstances, it is my considered opinion that, there is no need for determination on whether there is a point of law or not contemplated in the third appeal of the matter originating from the ward tribunal. This would be the case, if this court had sat as an appellate or revisional court on the substantive matter originating from the ward tribunal. In the circumstances therefore, one can still appeal on both points of facts and points of law to the court of appeal.

I am alive to the fact that an appeal being a matter of right of the aggrieved party, it should not be unduly denied, especially in a matter that presents technically first appeal. I therefore, on the strength of the affidavit deposed in support of the application and the submission by the learned counsel of the applicant, I am satisfied that this application has merits. Granting this application will enable applicant to exercise his legal right by giving him opportunity for the matter on

extension of time be given second opinion. Consequently, I grant the leave for the applicant to appeal to the Court of Appeal of Tanzania as prayed. I make no orders as to costs.

Ordered accordingly.



M.P. OPIYO,

JUDGE

22/4/2020

