

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR-ES-SALAAM

MISC. LAND CASE APPLICATION NO. 124 OF 2021

(C/O Misc. Land Application No. 168/2019)

ROSERITA KINGAMKONO APPLICANT

VERSUS

YUSUFU NYAHORI RESPONDENT

RULING

Date: 24/06/2021 & 02/07/2021

Nkwabi, J.:

By chamber summons supported by her affidavit the applicant is seeking for leave to appeal to the Court of appeal against the Ruling and Drawn order of the High Court in Miscellaneous Land Application No. 268 of 2019. She is also praying for costs and any other reliefs as the Hon. Court may deem just to grant.

The application was challenged by the respondent who filed his counter-affidavit. The matter was argued by way of oral submissions. Mr. Datus



Norbert, learned advocate, appeared for the applicant while Mr. Mashaka Ngole, learned advocate, appeared for the respondent.

When I was perusing the case file of this application, I noted an anomaly. I wonder whether the anomaly is by design or genuine mistake free of ill will. I was further intrigued by the mix-up of the case number of the application which is sought to be challenged to the Court of Appeal while at the application number which is a specific reference to this application, it is indicated that it originates from Miscellaneous Land Application **No. 168/2019** but in the very chamber summons, on the prayer on roman number "i" it is indicated that the applicant is seeking leave to appeal to the court of Appeal against ruling and drawn order of High Court Miscellaneous Land Application **no. 268/2019**.

This frustrated me, only to get relief from the decision of the Court of Appeal by **British Broadcasting Corporation v. Eric Sikujua Ng'maryo Civil Application No. 133/2004 (CAT)**:

"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

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*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 RE Rep. 90 at Page 91**]. However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical no leave will be granted."*

The above decision of the Court of Appeal of Tanzania is clear to the effect that it is not every leave that is sought necessarily is granted. It will only be granted after passing the tests set out by the Court of Appeal. Else, leave to appeal would be fruitless exercise and causes unnecessary extra expenses to the parties which defeats the ends of justice.

The anomaly I found in this case is that the copy of the ruling the applicant is seeking to challenge in the Court of Appeal was not attached to the application. One could be easily tempted to think that the applicant is hiding something.

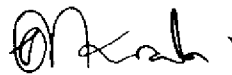
The importance of attaching necessary documents on the chamber application is for the presiding judge or magistrate be availed with the materials which enables him/her to give an informed decision. If that is not

done, there is a possibility of granting leave to even non-existent case or parties which would put justice to jeopardy. The opportunity to assess whether the intended appeal is frivolous, vexatious or useless or hypothetical is curtailed.

As such, and at this stage, I am left with no other option but to strike out the application. Since the anomaly was raised by the court suo motto, the application is struck out and each party to bear their own costs.

It is so ordered.

Dated at Dar-es-Salaam this 2nd day of July, 2021



J. F. Nkwabi,

Judge

Court: Ruling delivered in chambers this 2nd day of July 2021 in the absence of both parties.



J.F. Nkwabi,

Judge

