

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC.LAND APPLICATION NO. 357 OF 2020

EVA SIFUEL NGOWI.....APPLICANT

VERSUS

YASITHA NDELIANARUA.....RESPONDENT

RULING

Date of Last Order: 05/10/2021

Date of Ruling: 21/10/2021

A.MSAFIRI, J.

The application at hand is for leave to appeal to the Court of Appeal of Tanzania. This application originates from the Extended Land Appeal No. 52 of 2019, before the Resident Magistrate Court of Dar es Salaam at Kivukoni (extended Jurisdiction), and Land Application No. 477 of 2018 before Kinondoni District Land and Housing Tribunal and Shauri Na. 033/2013 before Kwembe Ward Tribunal.

The brief background of the matter is that the respondent Yasintha Ndelianaruwa has instituted a suit against one Yahaya Kwaros and 5(Five) Others before Kwembe Ward Tribunal. It is claimed that the appellant is among those 5 (Five) others. The Ward Tribunal decided in the respondent's favour, declaring her the lawful owner of the land in dispute. The appellant then opted to file a new Land Application, i.e. Application No. 477 of 2018 before Kinondoni District Land and Housing Tribunal

against the respondent claiming to be the lawful owner of the disputed land. The District Tribunal held that the matter before it was already determined and finalized by Kwembe Ward Tribunal and execution done by the same District Tribunal, therefore the matter before the same was Res Judicata. The District Tribunal dismissed the application.

Aggrieved, the appellant appealed to this Court and the appeal was heard before the Resident Magistrate with extended jurisdiction. During the hearing of the appeal, in her submissions, the appellant maintained that, she anticipate to prove ownership in Land Application No. 477 of 2018 since the respondent executed the decision of the Kwembe Ward Tribunal which the appellant was never part of the case. The appellant pointed that since she was not part of the suit before the Ward Tribunal which decided in the respondents favour, the matter was not Res Judicata. On her part, the respondent submitted before the appellate Court that the appellant was part of the original suit as she was among who were sued in the Ward Tribunal by the respondent and evicted in the area through Misc. Land Application No. 314/2013 for execution by the District Tribunal.

The appellate Court dismissed the appeal on the ground that, the appellant was a party to the original suit where she was expected to exercise her right to be heard but failed to do so. The appellate Court upheld the decision of the District Tribunal that the matter was res judicata because it was already determined by a Ward Tribunal with competent jurisdiction.

The appellant was not satisfied with the decision hence the intended appeal to the Court of Appeal. The application has been filed under Section 47(2) of the Land Disputes Courts Act, Cap 216 R.E 2002 and duly

supported with an affidavit deponed by the applicant in person. It has been contested by the counter affidavit of the respondent, also in person. With the leave of the Court, the application was heard by way of written submissions. The written submission by the applicant was drawn gratis by the Legal and Human Rights Centre (LHRC) while the one for the respondent was drawn gratis by the Women's Legal Aid Centre (WLAC).

In her submission to support the Application, the applicant stated that she was in the quest of justice upon Tribunal's discretion to determine the Land Application as the only avenue to exercise the right to be heard. However, the Honourable Tribunal in Land Application No. 477 of 2018 and Misc. Land Application No. 314 of 2013 dismissed the suit for being Res-Judicata without satisfying itself that the applicant had never been necessary or proper party of any previous suit.

The applicant argued that The Hon. Tribunal decided that the application before it was res-judicata without looking upon the elements of that principle, among the elements being the involvement of the same parties, or parties in privity with the original parties.

She maintained that, she did not appear as a party in Shauri Na. 33/2013 in Kwembe Ward Tribunal thus the principle of Res judicata could not apply. She prayed for the Court to grant leave for the applicant to file an appeal to the Court of Appeal.

On her part, the respondent vehemently opposed the application and submitted that the District Land and Housing Tribunal was correct in law and facts when it ruled the matter in favour of the respondent relying on the principle of Res Judicata. She stated further that all the elements to prove Res Judicata were proved. That the applicant was part of the

original suit at Ward Tribunal as she was among the ones who were sued, and the issue of ownership was determined and finalized by the said Tribunal. The respondent concluded that the appellate Court i.e. Resident Magistrates Court with extended jurisdiction was right to uphold the decision of the District Tribunal.

Having considered the parties submissions and the Court records, the issue here is whether the application has merit. It is trite law that in determination of such application, the High Court must certify that there is a point of law worth taking to the Court of Appeal.

The law demands that for the Court to grant leave to appeal to the Court of appeal, the applicant has to establish by affidavit or otherwise that the intended appeal involves serious points of law which requires the attention of the Court of Appeal. This position has been established on numerous time and in numerous cases, among them being the cases of **British Broadcasting Corporation vs. Erick Sikujua Ng'maryo**, Civil Application No. 135 of 2004, Court of Appeal of Tanzania at Dar es Salaam (Unreported) and **Rutagatina C.I. vs. The Advocates Committee and Another**, Civil Application No. 98 of 2010 CAT Dar es Salaam (Unreported).

The position also is an express requirement of section 5(2) (c) of the Appellate Jurisdiction Act, Cap 141 R.E.2019. Although the present Application is made under section 47(2) of the Land Disputes Courts Act, Cap 216 R.E. 2019, the same provision, i.e. Section 47(4) provides for the applicability of the Court of Appeal Rules, 2009 in every matter relating to an appeal to the Court of Appeal.

Back to the application before me, considering the fact that parties are bound by their pleadings, I have gone through the affidavit of the applicant to see whether the contents of the same state the points of law of important issues or facts which are important and need necessary intervention of the Court of Appeal and those issues were not handled by the first appellate court. The affidavit of the applicant raises two issues which are intended to be determined during the attended appeal, that is;

- (i) That, the presiding Resident Magistrate with Extended Jurisdiction, erred in law and fact by declaring the matter as Res-Judicata without taking consideration that Applicant never form part of the Ward Tribunal.
- (ii) That the Applicant has overwhelming chances of success in the appeal.

In her submission, the applicant reiterated the contents of her affidavit. Having analysed the applicant's pleadings and submission before this Court, I am of the view that the applicant is not raising any new issue or any new point of law which is of such important as to need intervention of the Court of Appeal.

The issue of Res-Judicata was judiciously addresses and determined by the District Tribunal and the Resident Magistrate Court with extended Jurisdiction as a first appellate court. Both courts established and was satisfied that the applicant was part of Shauri Na.033/2013 where the issue of ownership of disputed land was determined and the respondent was declared the lawful owner of the same.

The applicant instead of seeking for proper remedy in the circumstances, she opted to file a new Land Application where the suit was declared res-judicata.

In the case of **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo (supra)**, it was established by the Court of Appeal that, leave to appeal will be granted where the ground of appeal raise issues of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal.

In the present application, the applicant's raised issues does not meet the criteria set in section 5(2) (c) of the Appellate Jurisdiction Act or herein above cited case. The matter which the applicant is raising were well considered and determined by the two Courts i.e. The District Tribunal and the Resident Magistrate's Court with Extended Jurisdiction.

For those reasons I find that this application has no merit and I hereby dismiss it with costs.

It is so ordered.

Dated at Dar es Salaam this 21st day of October 2021



A. MSAFIRI

JUDGE

