

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 426 OF 2022

(Arising from Misc. Land Case Application No. 707 of 2021)

ABRAHAM FORD MWAKATUNDU.....APPLICANT

VERSUS

GODLISTEN UROMI.....1st RESPONDENT

ZUHURA A. MOHAMED.....2nd RESPONDENT

RULING

15/09/2022 & 20/10/2022

Masoud, J.

The application for leave to appeal to the Court of Appeal of Tanzania against the decision of this court in Misc. Land Case Application 707 of 2021 as per Mwenegoha J. was brought under section 47(2) of the Land Disputes Courts Act, cap. 216 R.E 2019 by the applicant. The affidavit supporting the application showed that the applicant has already taken the initial steps towards appealing to the said Court of Appeal by, among other things, lodging a notice of appeal as is required by the law.

The affidavit of the applicant also showed the reason why the applicant was seeking leave to appeal to the Court of Appeal against the said

decision of this court, which refused to grant his application for extension of time. The refusal of the extension was a result of the court's finding that the applicant failed to account for the delay. And in particular, instead of the applicant showing the alleged illegalities, he resorted to arguing the grounds of the intended appeal.

The shown reason in the supporting affidavit has to do with the claim that the court failed to see and consider grounds of illegalities raised in the application. As a result, the court found that the applicant failed to show the illegalities but only argued the intended grounds of appeal. From paragraph 4(a) to 4(g) of the applicant's affidavit, the applicant set out what he considered as the grounds of illegalities that were shown in his affidavit that supported his application for extension of time before this court.

In line with the foregoing, the applicant in paragraph 6 of his affidavit summarized the grounds of illegalities in two issues which would in his view need to be determined by the Court of Appeal if the sought leave is granted. The first is whether the applicant failed to show the grounds of illegalities in his application, and secondly, whether the applicant had no sufficient reasons to warrant extension of time.

The joint counter affidavit of the respondents meant to counter the application did not dispute the contents of the affidavit save for the issues which the applicant was of the view that they would need to be determined by the Court of Appeal once leave is granted. Apparently, the issues were set out from the grounds of illegalities which the applicant allegedly raised in his affidavit supporting the application for extension of time, and which were in the present application not disputed by the respondent. Ironically, it suffices to say that the applicant was also not disputing the issues having in the first place not disputed the grounds of illegalities.

The application was disposed of by filing written submissions. While the applicants through Mr Benedict Bagiliye, Advocate, filed his written submission in chief on behalf of the applicant pursuant to the filing schedule set by the court, there was no replying written submission filed on behalf of the respondents.

However, when the matter was called on for ruling, it was apparent that the respondent's counsel could not file reply as he was not served with the applicant's submission in chief. In the circumstances, and as there were no objection, the counsel for the respondent was availed time to go

through the written submissions in chief, and inform the court whether he would be ready to make his submission in reply orally of which he did and a rejoinder was equally made orally.

In the submission in chief filed on behalf of the applicant the counsel for the applicant basically took the court through the principles relating to granting of application for leave as they relate with the instant application.

In so doing, the learned counsel relied on the case of **Erasto Daima Sanga vs Peter Mwonga**, Misc. Land Application No. 66 of 2019 (unreported) as per Hon. Utamwa J. which restated and apply the law governing granting application for leave, having canvassed through a number of worthwhile authorities of the Court of Appeal.

In a nutshell, the counsel for the respondent reiterated what is in the counter affidavit insisting that although the grounds of illegalities were raised in the affidavit supporting the application whose ruling is sought to be appealed against, they were not argued by the applicant. Indeed, the counsel for the respondent admitted that the grounds of illegality were part of the record as they were clearly shown in the applicant's affidavit supporting the application for extension of time before Hon. Mwenegoha J.

I am in my determination guided by the case of **Harban Haji Mosi and Another vs Omar Hilal Seif and Another**, Civil Reference No. 19 of 1997 (unreported); and **Shaban Hamimu and Others vs Said Abeid John and Another** Misc Civil Application No. 4 of 2015 (unreported) which restated the position of the law that leave is grantable where the proposed appeal stands reasonable chances or where the proceedings reveal such disturbing features as to require the guidance of the Court of Appeal. I also drew inspirations from **Erasto Daima Sanga vs Peter Mwonga** (supra).


I was particularly guided by the principle in **British Broadcasting Corporation vs Eric Sikujua Ng'aro**, Civil Application No. 138 of 2004 where the Court of Appeal, among other things, insisted that leave to appeal is not automatic, but it is within the discretion of the court based on materials before the court, and that leave to appeal will be granted where grounds of appeal raise issues of general importance or novel point of law or where the grounds show prima facie or arguable appeal.

All considered, I am convinced that the instant application has shown that there are prima facie grounds warranting the court to exercise its

discretion in granting the leave. I so find as I have had regard to the grounds of illegalities shown in the applicant's affidavit, which were not disputed by the respondents, and which raise contentious issues worth taking to the Court of Appeal. I am also mindful that it was not disputed that the applicant showed in his affidavit the grounds of illegalities. The only contention was that they were not argued although it was not in dispute that they were on the record.

In the result and for the foregoing reasons, I would grant the application as I hereby do so. Costs in the cause. It is so ordered.

Dated at Dar es Salaam this 20th October 2022


B. S. Masoud
Judge

