

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 745 OF 2021

(Arising from the Ruling and Drawn Order in Misc. Land Application No. 367 of 2021 dated 17th November 2021)

DENIS SAID GWASA.....APPLICANT

VERSUS

JESCA S. RUGAKINGIRA.....RESPONDENT

Date of last Order: 21/4/2022

Date of Ruling: 12/5/2022

RULING

A. MSAFIRI, J.

On 24th day of December 2021, the above named applicant lodged the present application, by chamber summons under Section 5(1) (c) of the Appellate Jurisdiction Act [CAP 141 R.E 2019] and Rules 45 (a) and 47 of the Tanzania Court of Appeal Rules, 2019 seeking for the following reliefs namely;

- a. This Honourable Court be pleased to grant leave to the applicant to appeal to the Court of Appeal of Tanzania against the ruling and order of the High Court of the United Republic of Tanzania (Land*

Ally

Division) Hon. B. Masoud J, delivered on 17th November 2021 in Misc. Land Application No. 367 of 2021 on the following grounds;

- i. That the Honorable Court erred in law as it did not properly interpret the law governing the application for extension of time to appeal to the High Court.*
 - ii. That the Court erred in law and fact when it analyzed and ruled on the disputed/contentious facts, evidence and the grounds on which the reliefs were sought to wit; the question of sufficient reasons for the delay and illegality on the face of the impugned judgment in the Miscellaneous Civil Application No. 367 of 2021 thereby treating the application before it as an appeal in disguise rather than as an application for leave extension of time to appeal.*
- b. The Court wrongly exercised its discretion judicially when it failed to rule out that there were sufficient reason and good cause shown for the delay and that the question of illegality on the face of the impugned judgment was explained in the affidavit supporting the application goes to the roots of the merit of the case and it is itself sufficient reason.*

ALLS

c. Costs of this application be provided for.

d. Any other reliefs that this Honourable Court may deem just and equitable to grant.

The application has been taken at the instance of Infinity Attorneys and is supported by an affidavit sworn by Dr. Francis M. Magare, learned counsel for the applicant.

When the application was called on for hearing, Mr. Francis Magare learned advocate appeared for the applicant while the respondent appeared in person and she had no legal representation. The respondent prayed the application be disposed by way of written submissions the prayer was not contested by the learned counsel for the applicant.

Hence on 9th March 2022, by consent of the parties, this Court ordered the application to be disposed of by way of written submission, the order which was accordingly complied with by both parties hence this ruling.

Before canvassing the submissions in support and rival to the application a brief background giving rise to the present application is apposite.



Parties to the present application had a dispute over a piece of land hence the dispute was referred to Msongola Ward Tribunal (the Tribunal) which decided in favour of the respondent herein. The applicant was aggrieved with the decision of the Tribunal hence he lodged Land Appeal No. 96 of 2020 before the District Land and Housing Tribunal for Ilala at Ilala (the DLHT).

After hearing the parties, the DLHT dismissed the said appeal for lack of merits. The applicant stated in his affidavit that he was availed with the copy of the judgment of DLHT late hence he could not lodge the appeal in time. After having obtained the copy of judgment late, the applicant lodged Application No. 367 of 2021 seeking for extension of time to lodge an appeal to this Court against the judgment of the DLHT.

After hearing the parties in respect of Application No. 367 of 2021, this Court dismissed the same for lack of good and sufficient reasons. The applicant was aggrieved with the said outcome hence he lodged notice of intention to appeal to the Court of Appeal and later he lodged the present application seeking leave of appeal to the Court of Appeal for grounds stated above.

Alls.

Back to the present application, as stated above written submissions were lodged by both parties. The applicant has submitted at length on each of the grounds for determination by the Court of Appeal. Also the applicant has cited several decisions to fortify his stance. On the other hand the respondent lodged reply submission contesting the application by submitting that there is no sufficient reasons to have the prayers sought in the chamber summons be granted.

I have closely examined the affidavit in support of the application as well as submission in support and rival to the application. The point for my determination is whether the application has merits.

In an application for leave like the present one there are conditions to be considered upon which leave to appeal is grantable. Such conditions were expounded in the decision of the Court of Appeal in **British Broadcasting Corporation vs. Erick Sikujua Ng'maryo** Civil Application No. 138 of 2004 (unreported). In that case the Court stated that;

"Needless to say, leave to appeal is not automatic. It is within the discretion of the court to grant or refuse leave. The

Atts.

*discretion must however judiciously exercised and 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 vs. Holmes (1926)** ALL E. R. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical no leave will be granted."*

From the foregoing quoted decision, it is imperative to note that the grant of leave is not automatic but conditional in that it can only be granted where the grounds of the intended appeal raise arguable issues in the appeal before the Court. Furthermore, my duty in this application is not to determine the merits or demerits of the grounds of appeal raised when seeking leave to appeal. Instead a court has only to consider whether the proposed issues are embraced in conditions set out in **British Broadcasting Corporation vs. Eric S'kuja Ng'maryo [supra]**.

Unlike the submissions of the applicant in which he has forcefully submitted on each of the grounds intended to be determined by the Court of Appeal, it is not my duty to make decision on the substantive issues

Alle

before the appeal itself is heard. In the case of **The Regional Manager-TANROADS Lindi vs DB Shapriya and Company Ltd**, Civil Application No. 29 of 2012 CAT (unreported), it was held;

"It is now settled that a Court hearing an application should restrain from considering substantive issues that are to be dealt with by the appellate Court. This is so in order to avoid making decisions on substantive issues before the appeal itself is heard."

Hence the applicant was only required to show in his affidavit the arguable grounds for determination by the Court of Appeal, which in the present matter the applicant has successfully shown grounds worthy of consideration by the Court of Appeal. This is clearly seen on paragraph 9 of the affidavit in support of the application.

Consequently the application is meritorious and the applicant is hereby granted leave to appeal to the Court of Appeal of Tanzania. The applicant will have to file the same within the required time as per the law. Costs shall follow the events in the intended appeal.

Alle.

Dated at Dar es Salaam this 12th Day of May 2022



A handwritten signature in blue ink, appearing to read "A. Msafiri", is written over a horizontal dotted line.

**A. MSAFIRI,
JUDGE**