

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISC LAND APPLICATION NO. 216 OF 2023**

(Originating from Land Appeal No. 316 of 2022, dated 17 March 2023)

**KOSHUMA MTENGETI.....APPLICANT**

**VERSUS**

**HUSSEIN FIKIRINI TANGANYIKA .....RESPONDENT**

**RULING**

*Date of last Order:26/07/2023*

*Date of Ruling: 08/09/2023*

**K.D. MHINA, J.**

This is an application brought by way of Chamber summons made under section 47 (2) (c) of the Land Disputes Court Act [Cap 216 R: E 2019]

The applicant, Koshuma Mtengeti, is, *inter alia*, seeking the following orders against the respondent, Hussein Fikirini Tanganyika;

- a) That leave be granted to the applicant to appeal against the decision (judgement and Decree) of Hon A.Z. Mgeyekwa, J, delivered on the 17 Day of March 2023 in the High Court of Tanzania Land Division at Dar Es Salaam.*
- b) Costs of this application.*
- c) Any other order(s) of relief(s) this Court may deem just to grant.*

The chamber summons is supported by the applicant's affidavit, which expounded the grounds of the application and matters upon which the applicant intends to be considered by the Court of Appeal. The issues as per paragraph 11 are as follows;

- i. That this Honourable Court erred in law and facts by upholding the decision of the District Land and Housing Tribunal while there was a reasonable justification from the appellant.*
- ii. That this Honourable Court erred in law and facts by failing to consider the fact that refusal to grant the extension of time occasions a breach of the rules of natural justice as the Appellant will be left unheard.*
- iii. That this Honourable Court erred in fact by failing to consider that the Appellant will be prejudiced if not granted the extension of time.*
- iv. That this Honourable Court materially erred in law when it failed to hold that there was another illegality in the decision of Misususugu Ward as it was not clothed with pecuniary jurisdiction to entertain the dispute.*

A brief background is significant to appreciate what prompted the filing of this application.

The applicant applied for an extension of time at the District Land and Housing Tribunal (DLHT) for Kibaha in Misc. Land Application No. 210 of 2021. The applicant's ground at the DLHT was that he was unaware of the ex-parte Judgment delivered by the Ward tribunal for Misugusugu until he received the summons that there was an Application for Execution No. 42 of 2020.

The DLHT for Kibaha determined the application and found that the applicant had failed to adduce sufficient reasons to move it to extend time.

The applicant was aggrieved by that decision, and he preferred an appeal to this Court vide Land Appeal No. 316 of 2022, based on two grounds of grievances, namely: -

- i. *That, learned Chairperson, erred in law and fact by failing to deliberate or ignoring crucial evidence that the Appellant had not been aware of the existence of the case instituted at the Ward Tribunal.*
- ii. *That the learned Chairperson erred in law and fact by refusing to extend time within to file a revision while there was a reasonable justification from the appellant.*

In this court's decision dated 17 March 2022, the applicant's efforts went unrewarded after his appeal was dismissed for want of merits.

Undaunted, the applicant is now applying for leave to appeal to the Court of Appeal.

This application was argued by way of written submissions. The applicant was represented by Richard Mathias Kinawari, learned counsel, while the respondent Mr. Haji Mlosi, also a learned advocate.

In support of the application, Mr. Kinawari submitted that the applicant had ably demonstrated the existence of a prima facie arguable appeal through paragraphs 11 (i) (ii) (iii) and (iv) of the affidavit.

He stated the applicant had demonstrated that the Ward tribunal had no pecuniary jurisdiction to entertain the matter as the value of the suit land exceeded TZS. 3,000,000/=, which is the pecuniary limit of ward tribunals.

He narrated that the respondent maliciously avoided any disclosure of the value of the suit land contrary to the law and practice, and the tribunal never inquired or ascertained the same.

He argued that it is a trite law that a point of jurisdiction is so fundamental that it must be entertained whenever it is raised. Therefore,

granting leave to the applicant will allow the Court of Appeal to deliberate and determine that issue.

Mr. Kinawari also submitted that the applicant was adjudged unheard because he was not availed of the right to be heard. He was not summoned to appear before the Ward tribunal, and no evidence had been produced to prove that the summons were served to him.

He argued that it is a settled law that the right to be heard is a fundamental right, and its omission renders the proceedings null if the same decision would have been reached had the party been heard. To substantiate his submission, he cited **Mbeya-Rukwa Auto Parts and Transport vs. Jestina Mwakyoma** [2003] T.L.R. 251; **Elizabeth Mpoki, Noel Masima & Daniel Mlacha vs. MAF Europe Dodoma**, Civil Application No. 436/1 of 2016, CAT (unreported) and **Tang Gas Distributors Limited vs. Mohamed Salim Said & two others**, Revision No. 68 of 2011, CAT (unreported).

In response, Mr. Mlosi strongly opposed the application by submitting that the arguable issues raised by the applicant in paragraphs 11 (i, ii, iii and iv) were unmeritorious. All issues were extensively analyzed and properly

determined by the Judgment made by Hon. Mgeyekwa J. in Land Appeal No: 316 f 2022 and in the Ruling of the Tribunal where the issues were dismissed.

He further argued that prior to the dismissal Order made by Hon. Mgeyekwa in land Appeal No. 316 f 2022, the applicant had applied for Revision against the Ex-parte Ruling of the Misugusugu Ward Tribunal was dismissed for been filed out of time and failure of the applicant to adduce reasons for delay.

He invited this court to **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo**, Civil Application No. 138 of 2004 (CAT-unreported), **Bulyanhulu Gold Mine Ltd vs. Petrolube (T) Ltd & Another**, Civil Application No. 364/16 of 2017(Tanzlii) and **Lightness Damian and others vs. Said Kasim Chageka**, Civil Application No. 450 of 2020) (Tanzlii). He submitted that the legal standards set out in all these decided cases have not been met by the Applicant.

He concluded by submitting that the applicant did not demonstrate the existence of an arguable appeal, and thus, there are no sufficient reasons to grant the leave to appeal.

Mr. Richard Mathias Kinawiri did not rejoin the submission in reply. Therefore, having considered the chamber summons, and its supporting affidavit, the affidavit in reply, and the written submissions made by both learned counsel for the parties, the issue that has to be resolved is:

*"Whether or not there is the existence or otherwise of points of law worth to be considered by the Court of Appeal."*

Before "sailing" into the merits or demerits of the application, it is essential to highlight the key factors to consider before granting or refusing an application for leave to appeal to the Court of Appeal. The factors are as follows;

**One**, the Court must ascertain if there is a legal point worth being considered by the Court of Appeal. See **Marcus Kindole Vs. Burton Mdinde**, Civil Application No. 137/13 of 2020[COA] (Tanzlii).

**Two**, the Applicant must demonstrate that the intended appeal raises issues of general importance or novel point of law. See **HTT In Franco Limited V Juliano Charles Mkongomi**,\_Misc. Civil Application, No 24 of 2020 [HC] (Tanzlii)

**Three**, there must be prime facie grounds meriting an appeal. **Erasto Daima Sanga Vs. Peter Mwonga**, Misc. Land Application No. 66 of 2019 [HC] (Tanzlii)

**Four**, if the matters are of public importance and raise serious issues of misdirection or non-direction, results in a failure of justice. See **Erasto Daima Sanga (Supra)**

**Five**, there must be serious and contentious issues of law or fact fit for consideration by the Court of Appeal.

Furthermore, it is a well-established principle that this Court should refrain from determining the merits or otherwise of the substantive issue. See **Regional Manager TANROADS Lindi Vs. DB Shapriya and Co. Ltd**, Civil Application No. 29 of 2012 (COA).

Therefore, flowing from above, at this stage, this Court will confine itself to whether the proposed grounds pass the test of the factors to be considered before granting leave.

As alluded to earlier, the applicant raised four grounds which he requests for the leave of this Court to be considered by the Court of Appeal.



On careful reading and scrutiny of the chamber summons, applicant's affidavit to support the revision filed for revision purposes in this Court and impugned decision, I found that this ground was not raised and decided by this Court when determining the appeal in Land Appeal No. 316 of 2022. Not only that, it was not even raised when the applicant requested an extension of time to file revision against the decision of the Ward Tribunal in Misc. Land Application No. 210 of 2021.

That means the applicant intends to raise it for the first time at the Court of Appeal.

On this, the general position of law is that the appellate court cannot entertain a ground not raised in the first appellate Court. This is the position in **Melita Naikiminjal and another vs Sailevo Loibanguti** (1998) T.L.R 120, where the Court of Appeal held that;

*"An issue not raised before the first appellate court cannot for the first time be raised and entertained by the second appellate court."*

From above, since the ground was not at issue, i.e. it was never raised by the applicant nor determined by this Court when dealing with the appeal, then as the duty of this Court is to "filter" the grounds worth for the consideration of the Court.

This Court has already been reminded by the Court of Appeal when dealing with applications of this nature. In **Dorina N. Mkumwa vs. Edwin David Hamis**, Civil Appeal No.53 of 2017 (Tanzlii), the Court of Appeal held that it does not expect this Court to act as an uncritical conduit to allow whatsoever the intending appellant proposes to be perfunctorily forwarded to the Court of Appeal.

Therefore, from the discussion above, it is elementary that a new issue cannot be raised at this stage, thus making the fourth ground unfit for the consideration and evaluation of the Court of Appeal.

I understand that the question of jurisdiction can be raised at any stage. See **Tanzania – China Friendship Textile Co. Ltd vs. Our Lady of the Usambara Sister (2006) TLR 70**, but there must be material evidence placed before the Court. The evidence against and for that question of jurisdiction. The Court of Appeal cemented this position in **Yusuf Khamis Hamza vs. Juma Ali Abdalla, Civil Appeal No. 25 of 2020** (Tanzlii), where the Court held that:-

*"We are alive with the settled position of the law that time limitation goes to the Jurisdiction issue of the Court, and it can be raised at any time, even at the Appellate stage by the Court, but in order for*

*it to be noted and raised it would require material evidence to be placed before the Court.”*

Therefore, though the applicant raises the question of jurisdiction at this stage, the same was not backed up by any material evidence adduced at the DLHT or appellate level. Therefore, this Court cannot endorse an issue to the determination of the Court of Appeal without being sure of its prima facie validity.

In addition, this is an application intending to challenge the decision of the DLHT when refusing to grant an extension of time and not to challenge the decision of the Ward Tribunal. Therefore, despite the findings above but also the ground is misplaced.

On the remaining grounds, both are technically sought to challenge the decision of this Court in appeal. In a simple analysis, the applicant is complained to be refused an extension of time to file for an application for revision at the DLHT.

On this, by a mere look at the impugned decision, i.e. Land Appeal No. No. 316 of 2022, I am not persuaded by the applicant's application. This Court dealt with the grounds of appeal before it and determined that the

DLHT was correct in its decision after the applicant failed to adduce sufficient reasons for an extension of time.

Therefore, the applicant was not denied any of his rights. He was afforded the right to be heard, but he failed to move to the DLHT and this Court to grant him an extension of time. And that is the law and procedure that in the application for an extension of time, a person must adduce sufficient reason to move the Court to grant the same.

From above, if a person is refused that extension, it cannot be taken that his/ her right to be heard has been infringed, or there is a prejudice against him/her. In **Erasto Daima Sanga (Supra)** it held that;

*"I think it is now settled that, for an application for leave to appeal to succeed, the applicant must demonstrate that the proposed appeal raises contentious issues worth taking to the Court of Appeal or are of such public importance, or contain serious issues of misdirection or non-direction likely to result in a failure of justice and worth consideration by the Court of Appeal...In an application of this nature, all that the Court needs to be addressed on is whether or not the issues raised are contentious....the Court cannot look at nor decide either way on the merits or otherwise of the proposed grounds of appeal."*

Flowing from above, in this application, the applicant indicates that he was not satisfied with the Court's decision. And on that, the fact that this Court did not agree with the applicant's grounds of appeal could not constitute the grounds for leave to appeal.

It is trite that leave to appeal should not be based on the dissatisfaction of a party who intends to appeal; it should be based on the existence of points of law worth being considered by the Court of Appeal. There must be serious issues of misdirection or non-direction, resulting in miscarriage of justice.

Therefore, in the circumstances, I do not find if there are prima facie grounds meriting an appeal in the first, second and third grounds.

In the upshot, the grounds raised in the application are not worth being considered in granting the application for leave to appeal to the Court of Appeal.

Consequently, the application lacks merit, and I dismiss it with costs.

It is so ordered.



**K.D. MHINA**

**JUDGE**

**08/09/2023**