

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC LAND APPLICATION No. 443 OF 2023

(Arising from the decision of the High Court of Tanzania (Land Division) at Dar es Salaam in Miscellaneous Land Application No. 273 of 2023 dated 14/07/2023 by E.B. LUVANDA J)

FATUMA MOHAMED KISUGULU (BY POWER OF ATTORNEY OF NASSORO UBUGUYU).....APPLICANT

VERSUS

GUSTAPH KARIA.....RESPONDENT

RULING

12/9/2023 & 20/9/2023

A. MSAFIRI, J

On 21st July 2023, the above named applicant lodged the present Application by chamber summons under Sections 47(2) of the Land Disputes Courts Act [CAP 216 R.E 2019] seeking for the following reliefs namely; -

a) That this Honourable Court may be pleased to grant leave to the Applicant to appeal to the Court of Appeal of Tanzania against decision of High Court of Tanzania (Land Division) at Dar es Salaam in Miscellaneous Land Application No.273 of 2023 dated on 14/07/2023 by E.B LUVANDA. J)

b) Cost of this application follow the event. Aelle.

c) Any other further relief(s) that this Honourable Court may deem fit, just and equitable to grants.

The Application has been taken at the instance of the applicant and is supported by an affidavit affirmed by Fatuma Mohamed Kisugulu and contested by Mr Frank Kilian, the counsel for respondent who filed his counter affidavit.

When the Application was called on for hearing on 12/09/2023, the applicant appeared by personal representation, where she was legally represented by one Nassoro Ubuguyu and Ms Glory Venance learned counsel appeared for the respondent.

The legal representative of the applicant having adopted the affidavit in support of the Application, submitted that first; he was dissatisfied with the decision of this Court (Misc. Land Application No. 273 of 2023) as the court failed to give him the right to be heard while he was representing the applicant all the time. Second; the Court failed to consider his ground of sickness so as to extend time to enable him to file the intended appeal. Third; this Court decided wrong on the issues of service as the respondent refused the summons but the representative of the applicant went to serve the respondent through Street Executive Officer.

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In reply, Ms. Venance learned counsel opposed the application and prayed to adopt the content of counter affidavit as part of her submission. She argued that the issue of applicant's representation is the new issue raised by the said representative at this stage, hence this ground lacks merits. On the ground of sickness of the representative of the applicant, the counsel submitted that the medical sheet cannot be relied upon as the names on medical sheet are different from the names of applicant's representative that is why the Court failed to consider. On the issue of service, she argued that all parties entered appearance and this point lacks merits. She argued that the Application lacks merit and hence it should be dismissed with costs.

On rejoinder the applicant's representative simply reiterated his submission in chief, and argued that his names are Nassoro Omari and it is not true that he was not admitted in hospital. Finally, he prayed for the Application to be granted with costs.

Having gone through the submissions of parties in support and contest of the Application, the point for my determination is whether the Application has merits.

As stated before, the applicant is seeking leave of this Court to lodge an appeal to the Court of Appeal as he was aggrieved with the

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ruling of this Court in Misc. Land Application No. 273 of 2023. In the former Application, the applicant was seeking for an extension of time to appeal against the judgment and decree of the District Land and Housing Tribunal for Temeke in Land Application No. 171 of 2016. Having heard the parties, this Court dismissed the Application for lack of merits. The applicant intends to challenge the said decision therefore as mandatorily required, leave of this Court has to be sought first, hence the present Application.

In an Application for leave like the present one, there are conditions to be considered upon which before the leave to appeal can be granted. 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 of Appeal 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 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*

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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 the Court has only to consider whether the proposed issues are embraced in conditions set out in **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo [supra]**.

The applicant was only required to show in her affidavit the arguable grounds for determination by the Court of Appeal, and in the affidavit affirmed by the applicant at paragraph 7 (a-f) of the affidavit, the applicant has shown as follows;-

a) That this Honourable District Land and housing Tribunal erred in law and facts by not taking into accounts on the documentary evidence/ sale agreement tendered by the appellant as Exhibit P-1 in the expert judgement pronounced by Hon. A.R. KIRUMBI on 13th October 2017.

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- b) That this Hon. District Land and Housing Tribunal erred in law and facts by not taking into accounts the evidence testified by the 2nd and 3^d witnesses of the appellant.*
- c) That this Hon. District Land and Housing Tribunal erred in law and facts by not taking the assessors reasons for their opinions.*
- d) That this Hon. District Land and Housing erred in law and a fact by taking into accounts the weak and illogical evidence of the res pendent (sic).*
- e) That this Hon. District Land and Housing Tribunal erred in law and facts by rejecting to admit the appellant's documentary evidence/ sale agreement during the interparte hearing before Honourable Chairman K.A. SOSTHENES.*
- f) Generally, the evidence on records of expert judgement pronounced by honourable A.R KIRUMBI does not match with the findings of the judgement pronounced by Honourable Chairman K.A. SOSTHENES.*

This Court's duty is only to consider whether the purported points of law advanced raises an arguable issue in the intended appeal. Having read the grounds raised at paragraph 7 (a-f) of the applicant's affidavit, I am satisfied that they are arguable points of law. Consequently, I find the Application to have merit and I accordingly grant it. The applicant shall have to file the intended appeal within the required time as per the law.

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Costs shall follow events in the intended appeal.

Order accordingly.


A. MSAFIRI

JUDGE

20/9/2023

