

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

**MISC. LAND APPLICATION NO. 501 OF 2023**

*(Arising from the ruling and the order dated 18<sup>th</sup> July, 2023 issued by Hon. JUDGE E. B.  
LUVANDA)*

**SHARIFA ALOYCE MSHANA ..... APPLICANT**

**VERSUS**

**EXIM BANK(T) LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**KISHE AUCTION MART CO LTD ..... 2<sup>ND</sup> RESPONDENT**

**MABRUK OMARI MOHAMED ..... 3<sup>ND</sup> RESPONDENT**

*Date of Last Order: 17.10.2023*

*Date of Ruling: 16.11.2023*

**RULING**

**I. ARUFANI, J**

The Applicant in this application is seeking for leave to appeal to the Court of Appeal of Tanzania against the decision of this court delivered in Misc. Land Application No. 247 of 2023. The application is made under section 47 (1) of The Land Disputes Courts Act, CAP 216 R.E 2019 (Cap 216) (hereinafter referred as the LDCA) and Rule 45 of the Tanzania Court of Appeal Rules, 2009 as amended by Rule 6 of GN No. 362 of 2017 (hereinafter referred as the Court of Appeal Rules).

The application is supported by an affidavit of the applicant and it was opposed by a counter affidavit of Agnes Kinemo, Principal Officer of the first respondent. Third respondent informed the court he is not opposing the application and he didn't file counter affidavit in the matter.

While the applicant was represented in the matter by Mr. Hashim Mziray, learned advocate, the first and second respondents were represented by Mr. Gabriel Simon Mnyele, learned advocate and the third respondent appeared in the court in person. By consent of the counsel for the parties the application was argued by way of written submission.

In support of the application the counsel for the applicant stated that, the evidence contained in paragraphs 2, 3, 4, 5, 6, 7, 8, 10 and 12 of the affidavit give reasons why the applicant is seeking for leave to appeal to the Court of Appeal. He argued that, the mentioned paragraphs of the affidavit show the applicant is seeking for leave to appeal to the Court of Appeal because the court refused an application for extension of time within which she could have filed in the court an application for review of the decision delivered by the court in Land Case No. 162 of 2016 which she believed was ended illegally by the court.

He argued the mentioned land case was not disposed off according to the laws governing civil matters. He stated the applicant has demonstrated in this court that she did not sign the deed of settlement something which rendered the stated deed of settlement illegal for being not executed by all parties in the matter. He submitted there is no decree which has ever been extracted from the stated deed of settlement hence the whole process carried out after the stated deed of settlement to

benefit any party is illegal for want of court decree. He argued what was done by the court in rejecting the application for extension of time was like the court sat as a review court.

He submitted the applicant has demonstrated illegalities on the face of the records which includes non-extraction of decree, deed of settlement to be impartial deed as it was not signed by all parties and as such it could not dispose of the suit. He said they failed to understand why the court was of the view that there has been a lot of cases between the parties previous to the application which was refused. He submitted that an appeal is a constitutional right and one cannot be deprived the same unless there are exceptional circumstances. He supported his submission with Article 13 (6) (a) of the Constitution of the United Republic of Tanzania as amended from time to time.

He referred the court to the case of **Ilemela Municipal Council V. Ndeonasia Joseph Marengo**, Misc. Civil Application No. 86 of 2022, HC at Mwanza (unreported) where it was stated leave to appeal will be granted when the intended appeal has some merit whether factual or legal. He submitted that from all what has been stated in the affidavit and counter affidavit and what is provided under the article of the Constitution cited hereinabove injustice has been done to the applicant. He submitted further that it is appropriate for the parties to be given an avenue of being

heard on the alleged injustice. He based on the above stated reasons to pray the application be granted with no order as to costs.

In his reply, the counsel for the first and second respondents stated the envisaged application process and the appeal process itself is the abuse of the court process and an afterthought after several attempts to derail the execution of the settlement decree borne no fruit. He listed the facts he stated are not in dispute in the matter in his submission which includes the fact that the impugned settlement which was recorded on 12<sup>th</sup> September, 2017 has already been fully executed. He submitted the attempt to revise the matter is a very futile exercise.

He went on arguing that, grant of an application for leave to appeal is not automatic and stated the same is granted at the discretion of the court, the discretion which must be exercised judiciously based on available facts. To support his argument, he referred the court to the case of **Lightness Damian & 5 Others V. Said Kasim Chageka**, Civil Application No. 450/17 of 2020, CAT at DSM (unreported) where the case of **British Broadcasting Corporation V. Eric Sikujua Ng'imaryo**, Civil Application No. 133 of 2004 (unreported) where the conditions governing grant of leave to appeal to the Court of Appeal were stated.

He argued it is the duty of the applicant to show the grounds over which he is seeking leave to appeal and show that they are fit or

meritorious to be considered by the Court of Appeal. He referred the court to several cases decided by the High Court and the Court of Appeal which emphasized on the need of showing presence of serious ground that merit consideration by the Court of Appeal and use of the discretionary power of the court in granting leave to appeal to the Court of Appeal. Some of the cases cited are **Henry Julius Nyela V. Suda Mtunguja Rajabu**, Civil Application No. 514/17 of 2020, CAT at DSM and **Frasto Datma**

and that the applicant did not sign the deed of settlement. He stated all those were reasons for extension of time which were rejected by the court. He explained in his submission how the stated grounds are devoid of merit in the present application and submitted there is no serious issue, factual or legal that have been demonstrated to move the court to grant the applicant leave to appeal to the Court of Appeal. He argued the applicant was required to raise issues that at least show some errors in the ruling the applicant wishes to be dealt by the Court of Appeal.

He went on arguing that, they agree with the counsel for the applicant that appeal is a constitutional right of a litigant but submitted the same ought to conform with the legal requirements. He argued the applicant has failed to satisfy any of the requirements for leave to appeal to the Court of Appeal as amply demonstrated above. He submitted the applicant has not shown any viable grounds of appeal relating to prayer of extension of time which was rejected. At the end he prayed the court to reject the application and dismiss it with costs.

After carefully considered the rival submissions from both sides and after going through the chamber summons and its supporting affidavit, the court has found the major issue to determine in the present application is whether the applicant deserve to be granted leave to appeal to the Court of Appeal against the impugned decision of the court. The

court has found it is a well settled law that, in an application for leave to appeal to the Court of Appeal, the High Court has discretionary power to grant or refuse the sought leave.

However, the stated discretion must be exercised judiciously and in doing so the court is required to act on the materials brought before it by the parties. Those facts must be shown by the applicant both in his affidavit and in the submissions in support of the application and the ground moving the applicant to appeal must clearly be seen in the proceedings and decision sought to be impugned. The above view of this court is getting support from the case of **British Broadcasting Corporation** (supra) where the Court of Appeal stated that: -

*"Leave to appeal is not automatic. It is within the discretion of the court to grant or refuse leave. The discretion must, however judiciously be 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 issue of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal, (see **Buckle V. Holmes** (1926) All ER Rep. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious, or useless or hypothetical, no leave will be granted."*

It was also stated by the Court of Appeal in the case of **Harban Haji Mosi & Another vs. Omar Hilal Seif & Another**, Civil Reference No. 19 of 1997 (unreported) that: -

*"Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily the proceedings as a whole reveals such disturbing feature as to require the guidance of the Court of Appeal. The purpose of the provision is therefore to spare the court the spectre of unmeriting matters and to enable it to give adequate attention to cases of true public importance"*

While being guided by the position of the law stated in the cases quoted hereinabove, the court has found the affidavit, counter affidavit and the written submissions filed in the court by the parties shows the applicant wants to appeal to the Court of Appeal against the decision of this court made in Misc. Land Application No. 247 of 2023. The court has found the impugned decision of the court dismissed the application of the applicant which was seeking for extension of time within which to lodge in the court an application for review of the decision of the court made in the Land Case No. 162 of 2016 which was ended by deed of settlement filed in the court by the parties.

The court has found as rightly argued by the counsel for the respondent, the applicant has not specifically stated in his affidavit which grounds he intends to be considered by the Court of Appeal in challenging the decision of the court she is seeking for leave of the court to appeal against. The court has found the counsel for the applicant submitted that, paragraphs 2, 3, 4, 5, 6, 7, 8, 10 and 12 of the affidavit shows the reasons



why the applicant want to appeal to the Court of Appeal. After reading the mentioned paragraphs of the affidavit the court has found they are just portraying the fact of the matter which caused the applicant to be aggrieved by the impugned decision of the court. They are not demonstrating the grounds the applicant intends to take to the Court of Appeal for consideration and determination.

The court has found the law is silent on how the grounds to be taken to the Court of Appeal should be demonstrated to the court by the party seeking for leave to appeal to the Court of Appeal. However, as stated in the case of **British Broadcasting Corporation** (supra) an applicant for an application for leave to appeal is required to show in the affidavit supporting the application the grounds he intends to be considered by the Court of Appeal so as to enable the court to gauge them and see whether they deserve to be taken to the Court of Appeal.

The court has found what can be deciphered from the affidavit and the submission filed in the court by the counsel for the applicant is that the applicant is alleging there is illegality in the decision of the court delivered in Land Case No. 162 of 2016 which he wanted to be reviewed by the court. The alleged illegality is that the deed of settlement used to determine the above cited case was not signed by the applicant and the

second respondent and there is no decree extracted from the settlement deed filed in the court by the parties.

The court has considered the alleged illegalities and find that, although the counsel for the applicant argued both the applicant and the second respondent did not sign the deed of settlement but the affidavit supporting the application shows it is deposed therein that it is only the second respondent who did not sign the deed of settlement. There is nowhere in the affidavit supporting the application it is deposed the applicant did not sign the deed of settlement. The argument that the applicant did not sign the deed of settlement was raised in the submission, something which as stated in number of cases is not appropriate in law.

The court has also found that, as rightly argued by the counsel for the respondent, the stated illegalities were used as grounds of seeking for extension of time within which to file in the court an application for review of the decision of the court mentioned hereinabove and rejected by the court. The court has been of the view that, if the applicant intends to use the alleged illegalities as grounds of challenging the impugned decision of the court made in Misc. Land Application No. 247 of 2023, she was required to show in the affidavit supporting the application they are grounds to be determined in the appeal intended to be lodged in the Court of Appeal.

Since the alleged illegalities are in the decision arrived in Land Case No. 162 of 2016 and not in Misc. Land Application No. 247 of 2023 which the applicant intends to appeal against, the court has found it cannot be said the alleged illegalities are the grounds the applicant want to be considered and determined in the appeal intended to be filed in the Court of Appeal. To the view of this court the applicant ought to demonstrate in her affidavit and the submission filed in the present application the grounds arising from the impugned decision of the court he intends to be considered and determined by the Court of Appeal.

The court has found the counsel for the applicant argued that appeal is a constitutional right which cannot be deprived unless there are exceptional circumstances. The court is entirely in agreement with the counsel for the applicant that, as provided under Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, appeal is a constitutional right. However, as correctly argued by the counsel for the respondent and stated in the case of **Milicent Mrema V. Zantel**, Civil Appeal No. 289 of 2020, CAT at DSM (unreported) the stated right of appeal is not automatic. As stated in the case of **The British Broadcasting Corporation** (supra) the applicant is required to show there is legal, factual or mixed legal and factual points in the impugned decision of the

court which deserve to be taken to the Court of Appeal before exercising the stated right.

Since the applicant has not shown to the court the grounds, he intends to be taken to the Court of Appeal the court has found there is no way it can be said she is entitled to be granted leave to appeal to the Court of Appeal. In the premises the application of the applicant is not granted and it is accordingly dismissed in its entirety and the costs to follow the event. It is so ordered.

Dated at Dar es Salaam this 16<sup>th</sup> day of November, 2023.



**Court:**

  
I. Arufani  
**JUDGE**  
16/11/2023

Ruling delivered today 16<sup>th</sup> day of November, 2023 in the presence of the applicant in person and in the presence of Mr. Gabriel Simon Mnyele, learned advocate for the first and second respondents and in the absence of the third respondent. Right of appeal to the Court of Appeal is fully explained.



  
I. Arufani  
**JUDGE**  
16/11/2023