

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

MISC. LAND APPLICATION NO. 86 OF 2021

*(C/f Misc. Land Application No.113 of 2018, in the High Court of Tanzania at Arusha,
Originating from Application No.204 of 2016 in District Land and Housing Tribunal
at Arusha.)*

NAKAJI VAYANIAPPLICANT

Vs

**CHRISTINA THOMAS KOONGE (*Suing as Administratrix of the estate of
the late Thomas Koonge*)RESPONDENT**

RULING

Date of last Order:13-9-2022

Date of Ruling:19-10-2022

B.K.PHILLIP,J

This application is made under section 47 (2) of the Land disputes Court Act, (Cap 216, R.E 2019). The applicant prays for the following orders;

- i) That this Honourable Court be pleased to grant leave to the applicant to appeal to the Court of appeal of Tanzania against the decision of this Court (Hon.Mzuna. J) in Misc. Land Application No.113 of 2018.
- ii) Costs to abide the outcome.
- iii) Any other relief this Honourable Court may deem fit and just to grant.

The application is supported by an affidavit sworn by Nakaji Vayani, the applicant. Mr. Duncan Joel Oola, counsel for the respondent swore a counter affidavit in opposition to the application.

Before going to the arguments raised by the parties, let me give a brief background to this application, albeit briefly.

The applicant together with eight (8) persons who are not parties in this application were respondents in Land application No.204 of 2016 that was filed at the District Land and Housing Tribunal for Arusha, (herein after to be referred to as "the Land Tribunal") by the late Thomas Koonge who was the applicant at the Land Tribunal. The applicant was the 5th respondent. The late Thomas Koonge alleged that the applicant herein together with eight (8) persons who are not parties in this application had trespassed into his land. At the Land Tribunal, the applicant herein raised a point of preliminary objection to the effect that the application was improper and incompetent on the ground that the late Thomas Koonge failed to give the description of the suit land purchased by the 2nd, 3rd, 4th, 6th, 7th, 8th, 9th respondents in the said Land application No.204 of 2016 and the applicant herein from the 1st respondent. The Hon. Arbitrator upheld the aforesaid point of preliminary objection and proceeded to struck out the application. Aggrieved by the decision of the Land Tribunal, the respondent herein filed in this Court Misc. Land Case Application No.113 of 2018 for revision of the ruling of the Land Tribunal aforesaid. The application for revision was allowed. The Order of the Land Tribunal was set aside and this Court (Hon Mzuna J,) ordered application No. 204 of 2016 to be heard before another chairperson. Aggrieved by the decision of the

this Court aforesaid , the applicant who was 5th respondent in Misc. Application No. 113 of 2018, lodged the instance application seeking for leave to appeal to the Court of Appeal .He listed five grounds which he believes deserve the attention of Court of Appeal , to wit;

- (a) Whether revisional (sic) Court was correct to quash the decision of trial chairman on the basis that the suit land was properly described by the respondent in his application.
- (b) Whether the revisional(sic) Court was correct to rule that description of suit land in the pleading amount to error material (sic) which call for the intervention of Court through revisional power.
- (c) Whether revision Judge (sic) was correct to hold that the misinterpretation of the law is one among the illegality which this Court has duty to correct.
- (d) Whether revision Court (sic) was correct to rule if there is a need of death certificate of the applicant to prove his death (sic) and letter of appointment of the administrator of estate to proof (sic) the appointment of the administrator of estate of the applicant upon his death.

Back to the application in hand, the learned advocates Jenipher John and Duncan Joel Oola appeared for the applicant and respondent respectively. The application was heard of by way of written submission and both advocates complied with the order.

Ms. John started his submission by explaining the circumstances under which leave to appeal to the Court of Appeal can be granted.She

submitted that leave to appeal to the Court of appeal can be granted if there is any legal point worth the consideration of the Court of Appeal. To cement her arguments she cited the case of **CocaCola Kwanza Ltd Vs Charles Mpunga & 103 others , Civil Application No. 393/01 of 2017** and **National Bank of Commerce Vs Maisha Musa Uledi (Life Business Center) Civil Application No.410/07 of 2019**, (both unreported) among others, to support his argument. She went on submitting that at paragraphs 3 and 6 (a) (iii) of the amended application filed before the Land Tribunal by the late Thomas Koonge he stated that he was claiming land from the respondents in that application but did not specifically state the size of land he was claiming against each respondent, including the 5th respondent who is now the applicant herein. She contended that to avoid confusion the late Thomas Koonge had a duty to describe the size, location and demarcations of the land allegedly trespassed by applicant herein and other persons who were respondents in the application filed at the Land Tribunal so that each one of them would have been able to know what is claimed against him as well as to make the decree of the Land Tribunal executable . To cement her argument, he cited Regulation 3 (2) (b) and second schedule of the Land Disputes Court (The District Land and Housing Tribunal) R.E 2002 GN No.174 of 2003 and the case of **Rwanganilo Village Council and 21 others vs Joseph Rwakashenyi Land Case Appeal No.174 of 2018 (unreported)**. He further added that issue of description of the suit land is a legal issue to be considered by the Court of Appeal.

Furthermore, she submitted that it was wrong for the High Court to invoke its revisional power because revisional powers of High Court can

be exercised on issues of jurisdiction, that is, irregular or non-exercise of jurisdiction or illegal assumption of it and it has nothing to do with misinterpretation or misapplication of the laws and facts. To fortify her argument, she cited the case of **Blass Michael vs Saidi Selemani (2000) TLR 260**. She went on arguing that the findings of this Court that there was "error material" in the decision of the Land Tribunal to warrant the exercise of revisional powers of the High Court was erroneous as there was no such errors which could be termed as "error Material". She insisted that this Court lacked the revisional power to entertain the application for revision filed by the respondent. To support her argument, she cited the case of **Kassim Zackaria Vs Dr. Erasmo Kuwendwa, Land Revision No.25 of 2021** (unreported) in which this Court said the following;

"As earlier shown, the question is whether the application has disclosed error material to the merits of the case involving injustice

*According to **F.B.M.E bank Vs John Kengele and others , Revision Commercial Case No. 1 of 2008** such error would cover vices like bias ,lack of impartiality ,fraud misconduct unfair treatment on the part of the Court .And that once vices are established , there would be nothing to stop the Court from exercising these powers"*

Moreover, she submitted that the way the respondent filed the application for revision deserves the attention of the Court of appeal on the ground that , initially the application for revision was filed in the name of Thomas Koonge .When the respondent was questioned about her capacity to institute the case the Court ordered amendment of the application . The respondent's name was appeared in the application as the administratrix of the estate of the late Thomas Koonge but did

not submit in Court her letter of appointment as the administratrix of the estate of late Thomas Koonge and death certificate of the late Thomas Koonge. Ms. Jeniffer was of the view that the amendment of the revisional application was irregular. She urged this Court to allow this application so that the applicant can appeal to the Court of Appeal.

In rebuttal, Mr. Oola started his submission by pointing out that in the determination of an application for leave to appeal to the Court of Appeal, this Court has one task, that is to ensure that baseless appeals do not go to the Court of Appeal. He contended that the instant application has no merit because the applicant has not shown any point of law or a point of public importance that calls for intervention of the Court of Appeal. Furthermore, he argues that in application No. 204 of 2016 the respondent described the boundaries, size and location of suit land properly as required by Regulation 3 (2) (b) of the Land Disputes Courts (the District Land and Housing Tribunal) G.N No. 174 of 2003.

Moreover, he contended that this Court correctly ruled out that the ruling of the Land Tribunal on the issue of description of suit land in the pleading amounted to error material which requires the intervention of this Court by invoking its revisional powers. To support his argument, he cited the case of **Mabalanganya Vs Sanga (2005) E.A 152**. He added that the trial tribunal failed to understand the full gist of the case as far as the description of the suit land is concerned and proceeded to uphold the point of preliminary objection raised by the applicant herein which resulted into illegality and erroneous decision. He maintained that this Court correctly revised the decision of the Land

Tribunal. To fortify his argument, he cited the case of **Hitila vs Uganda (1969)1 E.A 219** and **Principal Secretary , Ministry of Defence & National Service Vs Devram Valambhia (1992) T.L.R. 182.**

Responding to Ms Jeniffer's arguments, Mr. Oola submitted that on 24th September 2019, this Court (Hon. Mzuna J,) ordered the amendment of the application by only substituting the name of the late Thomas Koonge with the name of Christina Thomas Koonge who is the administratrix of the estate of the late Thomas Koonge, former applicant. He contended that no any legal point arises from the order of the this Court aforesaid worth the attention of the Court of Appeal. To cement his argument he cited the case of **Coca Cola Kwanza Ltd (supra).**

Moreover, Mr.Oola was of the view that it is important to note that not everything should go to the Court of Appeal. In the instant case parties have chances to go before the Land Tribunal for their dispute to be decided on merits.He insisted that the Land Tribunal is in a position to adjudicate the matter expeditiously than going to the Court of Appeal.He urged this Court to dismiss this application.

In rejoinder, Ms. Jeniffer reiterated her submission in chief and insisted that the applicant established legal points worth to be considered by Court of Appeal. She listed those points as, one, proof of death and proof of appointment of the administratrix of the deceased estate, two, revisional powers of High Court if they were properly exercised and three the description of suit property in terms of size and boundaries. She prayed this application to be granted.

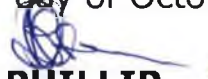
I have carefully gone through the affidavit, counter affidavit and submissions of both counsel, and am of the settled opinion that my task is to determine whether the applicant has shown any legal point /issues worth to be considered by Court of Appeal. First of all, I wish to point out that ,the position of the law is that leave to appeal to the Court of Appeal is within the Court's discretionary powers.It is a common ground that in an application for leave to appeal to the Court of Appeal, the applicant must show that there are novel issues which require the attention of the Court of Appeal. In the case of **British Broadcasting Corporation Vs Eric Sikujua Ng'imaryo, Civil Application No. 133 of 2004,** (unreported) the court said the following;

" 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 be judiciously exercised 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 point of law or where the grounds show prima facie or arguable appeal.... Where the grounds of appeal are frivolous , vexatious or useless or hypothetical , no leave will be granted .."

I have perused the Court's records as well as read the impugned Ruling and am in agreement with Ms. Jeniffer that the issue concerning the amendment of the revision application and the way the name of the applicant herein was substituted with the name of the late Thomas Koonge, without submitting in the Court the respondent's letter of appointment of administration of the deceased estate deserves the attention of the Court Appeal since it goes to the *locus standi* of the

applicant herein. Likewise ,the issue on whether it was proper for this Court to entertain the application for revision and invoke its revisional powers , deserves the attention of the Court of Appeal. From the foregoing, I hereby grant this application. Costs will be in course.

Dated this 19th day of October 2022



B.K.PHILLIP

JUDGE

