

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO.746 OF 2020**

*(Originating from Misc. Land Case Application No.96 of 2020)*

**CAROLINE KIVAMBA ..... APPLICANT**

**VERSUS**

**MOSI BAKARI ALLY ..... 1<sup>ST</sup> RESPONDENT**

**KABANGO ENTERPRISES ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of last Order: 14.07.2021*

*Date of Ruling: 14.07.2021*

**A.Z.MGEYEKWA, J**

This application is brought under section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019], Section 47 (1) of the Land Dispute Courts Act, Cap. 216 [R.E 2019] and section 95 of the Civil Procedure Code, Cap. 33 [R.E 2019]. The applicant seeks leave to appeal to the Court of Appeal of Tanzania to impugn the decision of this Court in Misc. Land Case Application No.96 of 2020 delivered on 30<sup>th</sup> November, 2020. The application is supported by an affidavit deposed by Ms. Caroline

Kivamba, the applicant. The 1<sup>st</sup> respondent feverishly opposed the application. In a counter-affidavit sworn by Mr. Faustine Emmanuel Mushi, legal presentative of the 1<sup>st</sup> respondent. The second respondent did not file a counter-affidavit.

When the matter was called for hearing on 14<sup>th</sup> July, 2021, the applicant and the respondent appeared in person, unrepresented.

It was the applicant who started to kick the ball rolling. She urged this court to adopt the applicant's affidavit and form part of his submission. The applicant stated that she is dissatisfied by the decision of this court before Hon. Makani, J. The applicant contended that she has raised several grounds for extension of time but this court determined the issue of financial constraints while she has raised an issue of illegality that the District Land and Housing Tribunal dismissed the Ward Tribunal decision in 2011, however, the Ward Tribunal proceeded with execution. The applicant claimed that Mosi Bakari had no locus to institute the case since the suit land belonged to his grandmother.

On the strength of the above submission, the applicant beckoned this court to grant her application for leave to appeal to the Court of Appeal of Tanzania.

In his reply, the respondent valiantly contended that the applicant has not adduced good reasons to warrant this court to grant the applicant's application for leave to appeal to the Court of Appeal of Tanzania against the decision of Hon. Makani, J. He complained that the applicant filed an application before Hon. Maghimbi, J which was struck out and she was advised to file an application for extension of time. The respondent went on to submit that the applicant had not adduced sufficient reasons to warrant Hon. Makani, J to grant her application for extension of time to file an application for revision out of time. He valiantly argued that the ground of financial constraint was not considered by this court. He claimed that the applicant is disturbing the court since she has lost in all cases.

On the strength of the above argumentation, the respondent beckoned upon this court to strike out the application with costs.

Rejoining, the applicant reiterated his submission in chief. Insisting, she argued that Mosi Bakari Ally instituted the case on his own capacity while the suit land belonged to his grandmother one Chiku. She refuted that she is disturbing the court. She said that she wants justice to be seen done.

In conclusion, the applicant once again urged this court to grant leave to file an appeal before the Court of Appeal of Tanzania.

Having heard the submissions of the learned counsel for the applicant and the respondent for and against the application, I will determine *whether the application is meritorious.*

It is trite law that leave to appeal to the Court of Appeal is granted if *prima facie* grounds are meriting the attention of the Court of Appeal as it was held in the case of **Sango Bay v Dresdner Bank A.G** [1971] EA 17, it was held that:-

*“ Leave to appeal will be granted where **prima facie** it appears that there are grounds which merit serious judicial attention and determination by a superior Court.”*

Equally, in the case of **Gaudensia Mzungu v IDM Mzumbe**, Civil Application No. 94 of 1994 (unreported), the Court of Appeal of Tanzania held that:-

*“ Leave will be granted if, **prima facie** there are grounds meriting the attention and decision of the Court of Appeal.”*

Applying the above authorities, I have to say that, the case referred to this court must be looked at its context rather than authority against the success of the intended appeal. Howbeit, my reading of the decision reveals that this Court came to a conclusion after noting that the applicant did not adduce sufficient reasons to warrant this court to exercise its discretionary powers to grant extension of time to file an application for

revision, as the result, the applicant's application was dismissed. In the case of **Grupp v Jangwani Sea Breeze Lodge Ltd**, Commercial case No.93 of 2002 (unreported) my brother Massati J (as he then was) expressed the matter this way:-

*"... I have no jurisdiction to go into merits or deficiencies of the judgment or orders of my sister judge in this application. All that I am required to determine is whether there are arguable issues fit for the consideration of the Court of Appeal..."*

Based on the above authority, I have noted that the applicant has submitted in length arguing that there was an issue of illegality which was not considered by this court. In paragraphs 5, 6 and 8 of the applicant's affidavit, the applicant has raised issues of illegality which she thinks are good grounds to attract the attention of the Court of Appeal to determine her appeal. The respondent on his side opposed the applicant's application for the reason that there is no any issue which attracts the attention of the Court of Appeal of Tanzania.

The facts in the instant application and without expressing any opinion, it is my view that the applicant has demonstrated sufficient ground to invoke the appellate jurisdiction of the Court of Appeal of Tanzania. I do not think the grounds raised in the applicants' affidavit and applicant's submission are not serious enough to be determined by the Court of

Appeal. I have also considered the fact that appeal is not only a statutory right but a constitutional right, of which a person cannot be lightly denied when the higher court is there to determine the applicant's rights.

In the upshot, I will, in the circumstances, exercise my discretion under section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019] and grant leave to appeal to the Court of Appeal.

Order accordingly.

DATED at Dar es Salaam this 14<sup>th</sup> July, 2021.

  
A.Z MGEYEKWA

**JUDGE**

14.07.2021

Ruling delivered on 14<sup>th</sup> July, 2021 in the presence of both parties.

  
A.Z MGEYEKWA

**JUDGE**

14.07.2021