

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

MISC. LAND APPLICATION NO.449 OF 2020

*(Arising from the decision of the High Court in Land Application No.3 of
2020)*

FRED KWEKA1ST APPLICANT

JULIUS MKAMA @ JULIUS BONIFACE MUKAMA 2ND APPLICANT

EMMA CHARLES MAPUNDA 3RD APPLICANT

JAQUELINE HERBERT NYAMUNGULI 4TH APPLICANT

VERSUS

ZAMADA ABILLAHI NJEMA1ST RESPONDENT

NOLI COMPANY LTD & COURT BROKER 2ND RESPONDENT

RULING

Last order: 06.07.2021

Ruling date: 06.07.2021

A.Z.MGEYEKWA, J

This application is brought under section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019] and section 47 (1) of the Land

Dispute Court Act, Cap. 216 [R.E 2019].The applicant seeks leave to appeal to the Court of Appeal of Tanzania to impugn the decision of this Court in Land Appeal No.03 of 2020 delivered on 5th August, 2020. The application is supported by an affidavit deposed by Julius Mukama @ Julius Boniface Mukama, second the applicant. The respondent feverishly opposed the application. In a counter-affidavit sworn by Nickson Ludovick, learned Advocate for the first respondent.

When the matter was called for hearing before this court on 21st April, 2021, the applicant had the legal service of Ms. Eunice Abrahamani, learned counsel also holding brief for Mr. Ludovick, learned Advocate for the respondent. By the court order and consent by the parties, the application was argued by way of written submissions whereas, the applicant's Advocate filed his submission in chief on 05th May, 2021 and the respondents' Advocate filed his reply on 24th May, 2021 and the applicant's Advocate filed a rejoinder on 31st May, 2021.

Ms. Eunice, learned counsel was the first one to kick the ball rolling. Reiterating what was deposed in the supporting affidavit, the learned counsel urged this court to adopt the applicant's application and form part of his submission. Mr. Eunice stated that the applicant wants to file a leave to go to the Court Appeal of Tanzania against the Misc. Application No.03

of 2019 to draw the attention of the Court of Appeal to determine whether the learned Judge gave his ruling accordingly to the law and by considering what was submitted by the parties. The learned counsel for the applicant started with a brief background of the facts which led to the instant application which I am not going to reproduce in this application. She submitted that they filed Application No. 3 of 2019 before this court for supervisory power. She added that the parties were ordered to argue the objection by way of written submission and this court came out with a ruling that the applicant was time barred. Ms. Eunice went on to state that the applicant was aggrieved hence this application for leave to go to the Court of Appeal of Tanzania.

The learned counsel for the applicant added that the applicant wants the Court of Appeal of Tanzania to determine six issues/grounds; whether an application that was in progress can be time barred, whether the court exercised its supervisory power properly accordingly to the requirement of the law, whether the learned Judge was justifiable to ignore Misc. Application No. 53 of 2019 which was in progress at the tribunal, whether the learned Judge was justifiable to regard the application which was before him as a revision, whether the learned Judge acted properly to use supervisory power interchangeably with revision exercise and whether the

learned Judge directed himself properly to hold that the applicant's counsel admitted that the application was time barred while it was contrary to what was submitted.

On the strength of the above submission, the learned counsel for the applicant beckoned upon this court to grant leave to the applicant to file an appeal to the Court of Appeal of Tanzania.

Responding, the learned counsel for the respondent urged for this court to adopt the respondent's counter affidavit and form part of his submission. Mr. Ludovick submitted that the applicant's submission and application is frivolous and misconception of the law and facts. He urged this court to dismiss the applicant's application. Mr. Ludovick valiantly submitted that the historical background is untrue and has nothing to do with the application for leave to appeal to the Court of Appeal of Tanzania, thus, he opted to no say anything.

Mr. Ludovick strongly submitted that the applicant's application and submission ought to be dismissed. He stated that the law for grant or refuse to grant leave to go to the Court of Appeal of Tanzania states that the High Court shall grant leave if it finds any point of law to be considered by the court. Fortifying his position he referred this court to the cases of

Ray Estate & Others v Dredner Bank (1974) EA 17 and **Ally Mzee Seko & Others v Athuman Chaurembo**, Application No. 543 of 2019.

The learned counsel for the respondent continued to argue that in the present application there is nothing to be considered by the Court of Appeal. He stated that Hon. Manyanda, J rejected the Misc. Land Application No.3 of 2020 for the reason that the matter was time barred because 60 days required by law had lapsed. The learned counsel for the respondent went on to state that the revision against Land Case No. 69 of 2007 was barred by 10 years and Revision against Application No.10 of 2012 was barred by 4 years thus the entire application was barred. Mr. Ludovick valiantly submitted that there is no any point of law to be considered by the Court of Appeal of Tanzania.

Mr. Ludovick did not end there he urged this court to reject the application for the reason that the application is preventing the ongoing execution. He added that litigation must come to an end. Mr. Ludovick went on to argue that the applicants are preventing the 1st respondent's right by just filing preposterous and worthless applications every time.

On the strength of the above submission, Mr. Ludovick urged this court to find that the application before this court is devoid of merit because the applicant has not pointed any illegality to warrant leave of this court.

He urged this court to dismiss the application with costs for being frivolous, vague, and unreasoned.

In his rejoined, the learned counsel for the applicant maintained his submission in chief. He insisted that the learned Judge misdirected himself by ignoring the existence of Misc. Application No. 53 of 2019 which was ongoing before the trial Tribunal which rendered the applicant to file an application for supervisory powers of the High Court.

In his conclusion, the learned counsel for the applicant urged this court to grant the applicant's application.

Having heard the submissions of the learned counsel for the applicant and the respondent for and against the application. A review of the rival depositions is centered on one grand question for settlement by the Court, this is as to *whether the application demonstrates a sufficient ground or a disturbing feature that requires the attention of the Court of Appeal of Tanzania.*

The issue for determination takes into account the settled position of the law to the effect that grant of leave to appeal to the Court of Appeal is not a matter of a mere formality. A party intending to be allowed to appeal must demonstrate, with material sufficiency, that the intended appeal carries an arguable case that merits the attention of the Court of

Appeal. Thus, a grant of leave is granted if *prima facie* grounds are meriting the attention of the Court of Appeal. In other words, there must be based on solid grounds which are weighty enough to engage the minds of the Court of Appeal. 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."

These decisions are in consonance with the decision cited by the counsel for the applicant; **Bulyanhulu Gold Mine** (supra); and the cited case by the learned counsel for the respondent; **Nubhain Rattansa** (supra). The Court of Appeal in Nubhain Rattansa held that:-

" An application for leave will be granted if it is a fit case for further consideration by the Court of Appeal..."

Applying the above holding, the Court of Appeal emphasized that the disturbing features must be in the form of serious points of law that warrant the attention of the Court of Appeal. Gathering from these decisions, it is clear that it is within this Court's discretion to refuse to grant leave where the Court is of the view that the **application for leave falls short of meeting the requisite threshold for its grant. The same was held in the cited case of Nurbhain Rattansi (supra) v Ministry of Water Construction Energy Land and Environment and Another**, Civil Application No. 3 of 2004 TLR [2005] 220 and in the case of **Saidi Ramadwani Mnyanga v Abdallah Salehe** [1996] TLR 74). I am aware that in determining whether this court can grant leave or not, this court will do the same without assuming power of the appellate Court as this court is bound to assume such power which is vested in the Court of Appeal of Tanzania. 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...."

I have perused the applicant's affidavit specifically paragraph 11 whereby the applicant has raised the legal issues. Examining closely the said issues, the same are confusing and are not point of law that attracts the attention of the Court of Appeal of Tanzania. Reading annexure MK2 attached with the applicant's application, it is shown that this court was called upon to satisfy itself as to the legality propriety and regularity in all of the tribunal proceedings, judgment, and decree. Before determining the matter, this court found that the matter was time barred, therefore this court did not determine the said application on merit since the application was dismissed for being time barred.

The learned counsel for the applicant insisted that the Court of Appeal of Tanzania interpreted the law while the rejection of the Misc. Land Application No.3 of 2020 was clear that it was dismissed for being time barred, the 60 days required by law had lapsed. This ground was not raised by the applicant's Advocate instead he shifted the blame to this court that it has failed to exercise the supervisory power. I am in accord with the learned counsel for the respondent that there is no arguable ground that merits the attention of the Court of Appeal of Tanzania.

Having failed to surmount that hurdle, the Court cannot exercise its discretion by granting the applicant's application for leave to appeal to the Court of Appeal of Tanzania. Thus, this application is with no merit, I dismiss the application without cost.

Order accordingly.

Dated at Dar es Salaam this date 22nd July, 2021.



A.Z. MGEYEKWA

JUDGE

22.07.2020

Ruling delivered on 22nd July, 2021 in the presence of both parties.



A.Z. MGEYEKWA

JUDGE

22.07.2020