

IN THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA

MISC. LAND APPLICATION NO. 70 OF 2021

*(Arising from Misc. Land application No. 44 of 2020 of High Court
of Tanzania, Mwanza District Registry)*

JOSEPH SYLVESTER MARIANGWE-----APPLICANT

VERSUS

PAULINA SAMSON NDAWAYA----- RESPONDENT

RULING

Last Order: 24.08.2021

Ruling Date: 10.09.2021

M. MNYUKWA, J

The application is preferred before this court by the way of chamber summons supported by an affidavit deponed by Joseph Sylvester Mariangwe, the applicant. Mr. Rweyongeza learned counsel, moved this court for leave to appeal to the Court of Appeal against the decision of this Court in Land Application No. 44 of 2020 by her ladyship Mgeyekwa, J. dated 21 July 2020 which was dismissed on the ground that the High Court lacked jurisdiction to entertain the application because there was a



decision of the Court of Appeal. Aggrieved, the applicant resolved to prefer an appeal to the Court of Appeal, thus he had to obtain leave to appeal in terms of section 47(1) of the Land Dispute Court Act Cap. 216 [RE:2019] read together with section 5(1) (c) of the Appellate Jurisdiction Act, Cap.141 [RE:2019].

The application was argued by the way of oral submissions conducted through audio teleconference whereby the applicant had the services of Mr. Rweyongeza and the respondent employed the services of Mr. Hezron, learned advocate. At the hearing, the respondent pointed out that they did not file the counter-affidavit for the reason that they did not object to the applicant's application.

The applicant learned counsel prayed this court to adopt the applicant's affidavit to form part of his submissions. He went on that, the application is for leave to appeal to the Court of Appeal. Referring to paragraph 7 of the affidavit, he averred that the applicant gave reasons as to why he made an application for leave to appeal to the Court of Appeal. He averred that, it was not proper for the trial court to rule that it had no jurisdiction to entertain the matter because the decision challenged was the decision of the Court of Appeal. Insisting, he supported his argument with the case of ***Abubakari Ali Himid vs Edward Ndelusye*** Civil Application No. 51 of 2007 CAT (unreported)



and the case of **Swissport Tanzania Limited vs Michael Lugaiya** Civil Appeal No. 119 of 2010 HC DSM (Unreported). He insisted that the applicant is in dilemma as to whether he should go to the High Court of the Court of Appeal of Tanzania.

He went on insisting that, the High Court erred when dismissing the matter and if at all it had no jurisdiction, it was supposed to struck out the same. He, therefore, prayed this court to grant leave for the reason that the respondent in this application is not objecting to the application.

Responding, the respondent was on a view that he did not object to the application.

In the determination of this application, I have considered the submissions to the application and the raised issues by the applicant as to whether they are issues worth the attention of determination by the Court of Appeal. Before I venture to determine the merits of the application, I find it wanting to make a few remarks, which I think will be sufficient to dispose of some of the arguments raised during the hearing.

For the reason that, what is preferred by the applicant is a leave to appeal to the Court of Appeal against the decision of this Court, it should also be known that the jurisdiction of this Court to grant leave to appeal under section 5(1) (c) of the Appellate Jurisdiction Act Cap. 141[RE: 2019]



is not predicated on any conditions contrary to the submissions by the applicant. To this effect, the applicant submissions were the same conceded by the respondent and therefore, this court is left to find out whether the grounds of the intended appeal raised issues of general importance or a novel point of law.

It is clear that this court is not called upon to determine the merits of the decision sought to be appealed against but only mandated to see if the intended appeal is arguable either on facts or law for, the determination of this application, this court lacks jurisdiction to go into merits or deficient of the judgment. I agree with the cases of **Abubakari Ali Himid vs Edward Ndelusye** Civil Application No. 51 of 2007 CAT (unreported) and the decision of this court in **Swissport Tanzania Limited vs Michael Lugaiya** Civil Appeal No. 119 of 2010 HC DSM (Unreported) cited by the applicant learned counsel. In a similar situation, the Court of Appeal in the case of **Hamis Mgida & Another vs The Registered trustee of Islamic Foundation**, Civil Appeal No.323 of 2018, pointed out that: -

"..the application for leave must state succinctly the factual or legal issues arising from the matter and demonstrate to the court that the proposed ground of appeal merits an appeal. The court concerned should decide whether the said proposed



grounds are prima facie worth of the consideration of the court of appeal."

See also the case of **Gaudensia Mzungu vs IDM Mzumbe**, Civil Application No. 94 of 1994 CAT (unreported).

Revisiting the facts in the instant application and without expressing any opinion, it is my view that the applicant has demonstrated sufficient grounds to invoke the appellate jurisdiction of the Court of Appeal.

In my view, once a leave is granted and an appeal is eventually lodged, the Court of Appeal will have to determine issues raised by the applicant as: -

- (i) Whether the high court of Tanzania which have the power to execute a decree following the decision of the Court of Appeal of Tanzania lacked jurisdiction to entertain an application challenging disposition by a person who claims to own the property the subject matter of the execution and who was not a party to the suit and the subsequent appeal.
- (ii) Whether the application challenging dispossession in the cause of the execution of a decree was a challenge of the Court of Appeal and the remedy was to go back to the Court of Appeal.



(iii) Whether the High Court having established that it had no jurisdiction to entertain the application, had jurisdiction to dismiss the application.

Therefore, I do not think if the above issues that have been also raised in paragraphs 7 (i), (ii), and (iii) of the applicant's affidavit are not serious enough to be determined by the Court of Appeal. In that circumstances, I do hereby exercise my discretion under section 5 (1) (c) of Cap. 141 [RE: 2019] to grant leave to the applicant to appeal to the Court of Appeal.

In the upshot, the application for leave to appeal before the Court of Appeal of Tanzania is granted with no order as to cost. It is so ordered.




M.MNYUKWA
JUDGE
10/09/2021

Ruling delivered on 10th day of September, 2021 via audio teleconference whereby all parties were remotely present.


M.MNYUKWA
JUDGE
10/09/2021