

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA AT ARUSHA

MISC. LAND APPLICATION NO. 115 OF 2021

(C/f Land Appeal No. 39 of 2020, in the High Court of Tanzania at Arusha, Originating from Land Application No. 28 of 2012 at the District Land and Housing Tribunal for Karatu at Karatu.)

TSERE AWTU.....1ST APPLICANT

YOTAM MANDOO AWTU *(Administrator of the*

The late Mandoo Awtu).....2ND APPLICANT

MANIMO AWTU.....3RD APPLICANT

Vs

THOMAS AWTU.....1ST RESPONDENT

BOSCO BURA.....2ND RESPONDENT

EMANUEL L. PANGA.....3RD RESPONDENT

RULING

Date last Order:20-7-2022

Date of Ruling:19-8-2022

B.K.PHILLIP,J

This application is made under the provisions of section 47 (2) of the Land Disputes Courts Act, Cap 216, R.E.2019). The applicants pray for the following orders

- i) That this Honourable Court be pleased to grant leave for the applicants to file their appeal to the Court of Appeal of Tanzania against the judgment and decree made in Land Appeal No.39 of 2020 by this Court.

- ii) Costs of the application be considered in the intended Appeal
- iii) Any other relief this Honourable Court deems fit and equitable to grant.

The application is supported by affidavits sworn by the applicants. The respondents filed a joint counter affidavit in opposition to the application. The learned Advocates Bungaya Matle Panga and Betty Sanare appeared for the applicants and respondents respectively. I ordered the application to be heard by way of written submission. Both advocates filed their written submissions as ordered.

A brief background to this application is that in the year 2012 the applicants herein filed a case against the 1st respondent at the District Land and Housing at Karatu (Henceforth 'The DLHT') claiming for 30 acres (Henceforth 'the suit Land'). While the suit was still pending at DLHT, the 1st respondent disposed of part of the suit land to the 2nd and 3rd respondent. Before the hearing of the suit Mandoo Awatu who was a party to the application passed on. Thus, the 2nd applicant herein applied in Court to be appointed as the administrator of the estate of the late Mandoo Awatu. Eventually, the matter was heard on merit and the DLHT ruled that the 1st respondent is the lawful owner of suit land.

Aggrieved by the decision of the DLHT, the appellants lodged their appeal in this Court. In its judgment this Court quashed the proceedings and judgment of the DLHT on the ground that the appellants herein had no *locus standi* to institute the case at the DLHT. Consequently,

the appellants filed this application seeking for leave to lodge their appeal to the Court of Appeal

Submitting in support of the application, Mr. Panga referred this Court to the contents of the applicants' affidavits in support of this application in which the deponents deposed that this Court raised a preliminary objection on the pecuniary Jurisdiction of the trial Tribunal based on the documents annexed to the written statement of defence and determined the same without according the parties right to be heard. That this Court erred to nullify the proceedings and judgment of the trial Tribunal. Mr. Panga went on arguing that in this matter there are two points of law worthy the attention of the Court of Appeal, to wit;

- i) Whether the 1st Appellate Court was correct in raising an issue on the pecuniary jurisdiction based on Exhibits DE3 and DE4 (sale agreements) without hearing the parties on the point so raised.
- ii) Whether the 1st Appellate Court was correct in adjudging that the applicants had no *locus standi* to institute the case before the trial Tribunal.

Mr. Panga implored this Court to grant this application.

In rebuttal, Ms. Sanare, started her submission by referring this Court to the case of **British Broadcasting Corporation Vs Eric Sikujua Ng'imaryo, Civil Application No. 133 of 2004**, (unreported) in which this 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 .."

She went on submitting that the criteria for granting leave to appeal to the Court of Appeal are the ones established in the case cited herein above. She contended that it is well known that a Court can raise a point of law on jurisdiction at any stage *suo motto*. This Court being the first appellate Court, cannot be faulted for raising the issue on jurisdiction *suo motto* since the Honorable Judge invited the parties to address him on the same. It was proper for this Court to step into shoes of the trial Tribunal and evaluate the evidence available on record on the issue of jurisdiction and *locu standi*, insisted Ms. Sanare.

Commenting on Mr. Panga's contention that the parties were not accorded opportunity to address the Court on the issues it raised *suo motto*, Ms. Sanare submitted that the judgment of this Court is self explanatory and speaks louder than the parties were heard on the issues raised by the Court *suo motto*. She urged this Court to not to grant this application.

I have perused the Court's records as well as read the impugned judgment. 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. I entirely agree with Ms. Sanare that the criteria for

granting or refusing to grant leave to appeal are the ones established in the case of **British Broadcasting** (supra). I do not need to reproduce the same here again. The task of this Court is to determine on whether or not this applicants have met the criteria established in the case **British Broadcasting** (supra) .

Upon analysis of the competing arguments made by Mr. Panga and Ms. Sanare, I noted that it is a common ground that this Court determined the appeal basing on issues on Jurisdiction and *locus standi* which were raised *suo motto* by this Court . Mr. Ipanga contends that parties were not accorded opportunity to address the Court on the issues it raised *suo motto*, whereas Ms. Sanare maintained that parties were heard and to her the fact that the proceedings does not show that parties were heard is minor omission since the in the judgment it is stated that parties were heard.

From the foregoing, in my considered opinion the way this Court raised the issues on jurisdiction and *locus standi* , and determined them is an important issue which is worthy the attention of the Court of Appeal. In short, I am in agreement with Mr. Ipanga that the two points he raised in his arguments are worthy the attention of the Court of Appeal.

In the upshot, this application is granted. Costs will be in course.

Date this 19th day of August 2022



B.K.PHILLIP

JUDGE.