

TANZANIA / JUDGMENT

josia rututuka vs joyce kiwanuka

2024 tzhc 891 7 march 2024

COURT
TZHCDECIDED
7 March 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (BUKOBAB SUB- REGISTRY) AT
BUKOBAB MISC. LAND APPLICATION NO. 59 OF 2023 (Arising from the High Court of
Tanzania(BukOba sub registry) in Misc. Land Application No, 95 of 2022 before HOn. IK Banzi /
and Misc. Land Application No. 51 oof2022before Hon. N Kiiekamajenga, J, and Misc. Land
Application No. 68 of2021 before Hon. Ngigwana, Jr and Originating from the High Court of
Tanzania before Hon. N. Kllekamejnga Jf in Misc. Land Application No. 10 of2019) JOSIA
RUTUTUKA..... APPLICANT VERSUS JOYCE
KIWANUKA.....RESPONDENT

RULING

6th February & 7th March 2024 A.Y. Mwenda, J Under Section 47(1) of the Land Disputes Courts
Act: [Cap 216 R.E 2019], the applicant is moving this court to grant leave to appeal to the Court of
Appeal. This application is supported by the affidavit deponed by the applicant himself. The same
is however contested vide a counter affidavit sworn by the respondent which was accompanied
by notice of preliminary objection on two points which go as follows, that: - 1)That this
Honourable Court was(sic) not properly moved to grant the craved

orders

2)That this application is bad in law for contradicting on which leave for an appeal is being
applied for(sic), whether Misc. Application No. 27/2023 or Misc. Application No. 51/2022 i Based
on the said points of objections, the court fixed a hearing date where the applicant appeared in
person without legal representation whilst the respondents enjoyed the legal aid services from
Ms. Theresia Bujiku, learned counsel from Mama's Hope Organization for Legal Assistance
(MHOLA), Submitting in support of the first point of objection, Ms. Bujiku argued that the
applicant wrongly moved this court under section 47(1) of the Land Disputes Courts Act [Cap 216
R.E 2019] since the decisions he is attempting to challenge were not made by the court under
original jurisdiction. According to the learned counsel, the applicant ought to have invoked
section 47(1) of the Act. While citing the case of ALLY SEIF MWANZI V, HALIMA ALLY ENZIM
BALI, MISC. CIVIL APPLICATION NO, 666 OF 2020, the learned counsel prayed the present
application to be struct out. Regarding the second point of objection, the learned counsel

submitted that there is contradictions in the orders the applicant is intending to challenge before the court of appeal. She averred that while at paragraphs 1 and 6 the applicant deponed dissatisfaction with the decision in Misc. Land Application No. 27/2023, at paragraphs 2,3, and 7 he deponed differently by showing his intention to challenge the decision in Misc. Land Application No. 51/2022. According to her, this creates confusion to the court as it is unclear from which decision the applicant is seeking leave to appeal before the Court of appeal. To conclude, she prayed this application to be struck out. 2 Responding to the submissions by the learned counsel for the respondent, the applicant had nothing of essence to submit. He briefly said that if the said points of objections are merited, that would be due to incompetence of the advocate who drew his application papers. That being the summary of the submissions for and against the preliminary points of objections, it is to determine the merits and demerits of the same. Commencing with the second point of objection it is apposite to point out that the applicant's prayers as appearing in part (i) of the chamber summons is seeking leave to appeal to the court of appeal. This application is accompanied with an affidavit containing seven paragraphs. As a matter of law, the said affidavit is expected to support the prayer in the chamber application. This position was stated in the case of *THE REGISTERED TRUSTEES OF THE ARCH DIOCESE OF DAR ES SALAAM V. THE CHAIRMAN, BUNJU VILLAGE GOVERNMENT*, CIVIL APPEAL NO. 147 OF 2006 where the Court of Appeal adjudged as follows, that: - "Since an affidavit is sworn evidence, it must contain grounds supporting the application under which it is made." The law also provides that the Court is barred to entertain an application/petition which is frivolous and vexatious. This position was articulated in the case of *FREEMAN AIKAEL MBOWE VS DPP, IGP & AG*, Misc. Civil Cause No. 21 of 2021 in which it was held inter alia that: - 3 "I agree that this court is not vested with jurisdiction to entertain frivolous or vexatious application. I also agree with this court elaboration on what amounts to frivolous or vexatious petition in the case of *Ado Shaibu...*" [emphasis added]. The terms and what amounts to frivolous or vexatious has been discussed in several authorities. In the case of *BULYANHULU GOLD MINE LIMITED & 2 OTHERS V. PETROLUBE LIMITED*, CIVIL APPLICATION NO. 365/16 OF 2017, the Court of Appeal had these to say, that: - "...The Academic's LEGAL DICTIONARY, 22nd Edition by S.L Si I wan defines the terms at page 155, thus:

- (i) Frivolous and vexatious complaint to mean: A complaint put in against any person for the purpose of annoyance. (ii) Frivolous to mean: Clearly lacking in substance, clearly insufficient as a matter of law. The Court went further and said: "In almost similar words, the *CONCISE OXFORD DICTIONARY*, Tenth Edition defines the term: Vexatious to mean: causing annoyance or worry, and brought without sufficient grounds: purely to cause annoyance, and..." [emphasis added]. 4 Again, in the present application, the affidavit in support of the application is ambiguous in the sense that it is not known as from which decision of this court the applicant is seeking leave to appeal to the court of appeal. In the said affidavit, the applicant referred two cases i.e. Misc. Application No.27/2023 and Application No. 51/2022 as appearing at Paragraphs 6 and 7. These paragraphs read (respectively) as follows: - b. That from what is stated herein above I was not contented with the decision of the High Court in Misc. Application No. 27/2023 hence this application as

legal prerequisite in the process of lodging an appeal to the court of appeal

7. That this is an application for leave of the High Court since my previous application has chances of success wherein, I was in the Court premises when application No. 51/2022 was dismissed for non-appearance. Going through the preceding paragraphs, it is uncertain, as it was rightly submitted by the learned counsel for the respondent, from which decision/order is the applicant seeking leave to appeal to the Court of appeal. In other words, it is unsafe to determine this matter since the affidavit is not supporting the prayers in the chamber application- Since this ground is sufficient to dispose this matter, I found no need to dwell into the determination of the first point of objection. s On that basis this application is incompetent and eligible to be struck out as I hereby do. This application is struck out and there is no order as to costs. It is so ordered. JU 07.03.2024 Ruling delivered in chamber under the seal of this court in the presence of Joyce Kiwanuka the respondent and in absence of the applicant with notice. 07.03.2024 6

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