

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(LAND DIVISION)**

**MISCELLANEOUS APPLICATION NO. 1618 OF 2019**

**(ARISING OUT OF REVISION APPLICATION NO.11 OF 2018)**

**CHARLES SENSONGA MUWANGA MAGOYE:.....APPLICANT**

**VERSUS**

**1. HARRIET NABWAMI**

**2. RUTH NASSUNA**

**10 3. HELLEN NAKITENDE**

**4. DENIS KALIBA**

**5. STEPHEN BULEGA**

**6. LUKA MPAGI**

**7. EDWARD ZIMULA:.....RESPONDENTS**

**15 Before: Lady Justice Alexandra Nkonge Rugadya.**

**RULING.**

**Introduction:**

This application is brought by way of Notice of Motion seeking orders that leave be granted to the applicant to appeal this court's ruling in **High Court Civil Revision No.11 of 2018** arising from **Makindye Chief Magistrate's Court Civil Suit No.1756 of 2009** and that costs of and incidental to the application be provided for.

**Grounds of the application:**

The grounds for the application are briefly as stated in the application and are further expounded in the applicant's affidavit in support of the application.

**25** In summary the grounds are that the applicant is aggrieved by the ruling of this court made in **High Court Civil Revision No.11 of 201.** That the applicant's appeal raises pertinent issues, with a high likelihood of success and that it is in the interest of justice that this Court grants the applicant leave to appeal.

**30** Ms. Ruth Nassuna, the 2<sup>nd</sup> respondent however opposed the applicant's application and argued that the applicant has not shown that he has an arguable case on appeal.



I have had the opportunity to peruse and consider both the pleadings, the affidavits for and against this matter and the submissions by each side in this matter, and in resolving this matter I have taken the same into consideration.

5 The applicant brought this application under the provisions of **Rule 40 (1) and 42 of the Judicature (Court of Appeal Rules) Direction, SI 13-10** which require a party that intends to appeal to the Court of Appeal to obtain leave of the High Court before such appeal can be lodged, where there is no right of Appeal.

The law governing the application for leave to appeal is set out in **Order 44 rule 2 of the Civil Procedure Rules** and it provides as follows;-

10 **"An appeal under these rules shall not lie from any order except with leave of the court making the order or of the court to which an appeal would lie if leave were given."**

15 The right to appeal is a creature of statute as enunciated in the case of **Shah V. Attorney General (1971) EA 50** and where there is no right of appeal, a party must seek leave of court to do so.

20 The principle upon which such leave can be granted was stated in the case of **Sango Bay Estates Ltd & Others Vs Dresdner Bank AG (1972) EA 17** where the **East African Court of Appeal** held that leave would normally be granted where prima facie it appears that there are grounds of appeal which merit serious judicial consideration. In **Degeya Trading Stores (U) Ltd Vs Uganda Revenue Authority C. AC Application No. 16 of 1996** their Lordships of the Court of Appeal had this to say:

**" An applicant seeking leave to appeal must show either that his intended appeal has reasonable chance of success or that he has arguable grounds of appeal and has not been guilty of dilatory conduct."**

25 Their Lordships went further and stated:-

**"As to whether the intended appeal has a chance of success we can only at this stage say that there are matters that merit consideration on appeal"**

30 At this stage court should refrain from considering matters which may in any way prejudice the issues which may rise at the appeal or amount to a review of its own ruling. So it is not open to this court to determine whether the intended appeal would succeed or not.

35 If the applicant has raised arguable grounds of appeal and there are serious matters which merit consideration on appeal, and is not guilty of dilatory conduct then court should exercise its discretion and grant the applicant leave to appeal. (**See: The Commissioner General Uganda Revenue Authority Vs Meera Investments Ltd H.C. Miscellaneous Application No. 359 of 2006**).





The applicant attached a draft memorandum of appeal to his affidavit in support of the application bearing the intended grounds of appeal. The court should take into account the intending appellant's objective feelings of injustice when considering whether or not to grant such permission.

5 The argument by the applicant in this case was that this court did not properly re-evaluate the evidence thereby arriving an erroneous decision that set aside the judgement from the magistrates' court.

The exercise of court's largely discretionary power to allow or disallow this kind of application ought to be carried out judiciously and on that basis alone, I grant this application.

10 I accordingly allow this application, but with no order made as to costs.

*I so order.*

  
.....  
**Alexandra Nkonge Rugadya.**

15 **Judge.**

**11<sup>th</sup> November, 2020.**