

The Applicant filed Miscellaneous Application No. 03 of 2022 seeking to Review and set aside the Judgment of Court in Civil Suit No. 012 of 2016. The Applicant was never a party to Civil Suit No. 012 of 2016 and brought Miscellaneous Application No. 03 of 2022 at the time of execution of Decree in Civil Suit No. 012
5 of 2016. The Applicant contended that the Judgment/Decree of Court in Civil Suit No. 012 of 2016 affected her interests in the suit land where compensation was ordered to be paid to the 1st Respondent (Administratrix of the estate of Tinkasimire Yowana), by the 2nd Respondent. The Applicant asserted that the suit land for which the court had ordered compensation in favor of the 1st Respondent, was the
10 Applicant's land which she had purchased from the late Tinkamanyire Yowana. The Applicant adduced purchase agreements and a photocopy of a certificate of title. The Applicant averred that she had not been able to present such evidence during the hearing of Civil Suit No. 012 of 2016, and that the new evidence was relevant and important evidence regarding her ownership of the suit land which was not
15 considered during trial. The 1st Respondent on the other hand contended that the suit land that was the subject matter in Civil Suit No. 012 of 2016 was outside of the land sold to the Applicant by the late Tinkamanyire Yowana and had remained as part of the estate of the late Tinkamanyire Yowana. In the ruling of this Court dated 16th August 2022 it was held inter-alia, that whereas the evidence was new, it had no
20 bearing or relevance to the subject matter in Civil Suit No. 012 of 2016 as it had not been proved that the suit-land in Civil Suit No. 012 of 2016 was part of the land that Tinkamanyire Yowana had sold to the Applicant. Miscellaneous Application No. 03 of 2022 was thus dismissed with no orders as to costs.

25 The Applicant being aggrieved with the decision of court in Miscellaneous Application No. 02 of 2022 filed the current application seeking leave to appeal against the ruling of this Court to the Court of Appeal.

Grounds of the Application:

The grounds upon which the application is premised are contained in the affidavit in support of the application deponed by the Applicant as follows:

- 5 (a) That she was aggrieved by the ruling of court dismissing the Application for Review and setting aside the Judgment and Decree in Civil Suit No. 012 of 2016 and intended to appeal against the same. That she is the legal owner of the land trespassed upon by the 2nd Respondent to which compensation was wrongly awarded to the 1st Respondent.
- 10 (b) That without any color of right, the 1st Respondent claimed ownership of the same alleging that it formed part of the estate of the late Yowana Tinkasimire whereas not. That the Applicant bought the suit land from Yowana Tinkasimire in different bits and later secured a title for the same currently comprised in Block 139, Plot 49 land at Nyantungo Village.
- 15 (c) That the trial court in Civil Suit No. 012 of 2016 was unaware of the new and important evidence regarding the Applicant's ownership of the suit land as the Applicant was not a party to and was unaware of the suit as she lived abroad in the USA and as such, was unable to present such evidence in court.
- (d) That the Applicant acted promptly without and delay as soon as she became
20 aware of the Judgment in Civil Suit No. 012 of 2016 and sought to Review the same. That the 1st Respondent has no reasonable defense to her actions as she was at all material times aware that the Applicant is the true legal owner of the suit land.
- (e) That the Applicant will suffer irreparable loss if the 1st Respondent is unjustly
25 enriched and the interests of justice shall be defeated. That the decision against which the Applicant intends to appeal caused a miscarriage of justice to her

as it will affect the ownership of the suit land. That the Applicant has an arguable case worth consideration by the appellate court.

(f) That the intended appeal against the trial Judge's ruling has reasonable prospects of success and that no injustice shall be caused to the Respondents if leave is granted. That it is just, fair and equitable that leave to appeal against the ruling and order in Miscellaneous Application No. 12 of 2022 be granted.

The Respondents did not oppose the application and I shall thus proceed under Order 9 rule 11(2) of the Civil Procedure Rules to consider the same *ex parte*.

10 **Issues:**

I have identified the following issues for purposes of disposing of the application:

1. **Whether the Applicant has presented grounds to warrant grant of leave to appeal.**
2. **Remedies.**

15 **Representation:**

M/s Byamukama, Kaboneke & Co. Advocates represented the Applicant and filed written submissions which I have considered together with the pleadings.

Resolution:

20 **Whether the Applicant has presented grounds to warrant grant of leave to appeal.**

The respondents never filed affidavit(s) in reply. The facts as presented by the Applicant are thus deemed to be admitted.

25

The law governing the application for leave to appeal is set out in Order 44 rule 2 of the Civil Procedure Rules thus: *“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.”*

5

This is an application to grant leave to appeal against the ruling of this court in Miscellaneous Application No. 03 of 2022. That Application was dismissed on the grounds that it had not been sufficiently proved by the Applicant that the suit-land in Civil Suit No. 012 of 2016 that the Applicant had claimed as hers, was part of the
10 land that Tinkamanyire Yowana had sold to the Applicant.

In the case of **Sango Bay Estate vs Dresdner Bank & Attorney General [1971] EA 17 Spry V.P** stated the principle upon which an application for leave to appeal may be granted thus: *“As I understand it, leave to appeal from an order in civil
15 proceedings will normally be granted where prima facie it appears that there are grounds of appeal which merit serious judicial consideration...”* The Court further noted that: *“At this stage of litigation we are satisfied that the grant of leave to appeal is necessary to protect the applicant’s right of appeal and for attaining the ends of justice in the instant case.”*[Emphasis added].

20

Leave to appeal will be given where the court considers that the appeal would have prospects of success; or there is some compelling reason why the appeal should be heard. In the case of **Swain v Hillman [2001] 1 All ER 91 Lord Woolf, MR** noted thus: *“That a real prospect of success means that the prospect for the success must
25 be realistic rather than fanciful. The court considering a prospect for permission is not required to analyse whether the grounds of the proposed appeal will succeed, but merely whether there is real prospect of success”* [Emphasis added]. See also

**Degeya Trading Stores (U) Ltd vs Uganda Revenue Authority Court of Appeal
Civil Application No. 16 of 1996.**

In **Akisoferi Ogola Vs Aliko Emmanuel Otheino & Anor (1998) VI KALR I** it
5 was held that the Applicant for leave to appeal to the Court of Appeal must show
that the application bears substantial questions of law to be decided by the appellate
Court and that he has a bona-fide and arguable case on appeal.

In **KilamaTonny & Anor Vs. Mr. Grace Perpetua Otim**, the Hon. Justice Stephen
10 Mubiru noted thus: *“Leave to appeal should not be refused simply because the trial
Magistrate or the appellate Judge is of opinion that the decision was correct. If
the question is one of principle and a novel one, ordinarily leave to appeal should
be granted. Substantial justice should not altogether be lost sight of in considering
finality of decision, in cases where the Legislature has thrown the duty of deciding
15 whether the litigation should be continued further, on the trial court or
alternatively the appellate Judge who considers an application for leave to appeal.
It would be obviously absurd to allow an appeal against a decision under a
provision designed to limit the right of appeal. However, if the question raised be
one in respect of which there is no authoritative decision that would be a guide to
20 the parties, then the circumstances favour granting of leave.”*

The issue for determination is **whether the Applicant has presented grounds to
warrant grant of leave to appeal**. One of the considerations for the grant of leave
is whether prima facie there are grounds of appeal which merit serious judicial
25 consideration. In the present application the Applicant contends that the suit-land in
Civil Suit No. 012 of 2016 for which the 1st Respondent is being compensated,
rightfully belongs to her as she had bought it from the late Tinkamanyire Yowana

and therefore the suit-land does not form part of the estate of the late Tinkamanyire Yowana. That the Applicant will suffer irreparable loss if the 1st Respondent is unjustly enriched and the interests of justice shall be defeated. That the decision against which the Applicant intends to appeal caused a miscarriage of justice to her
5 as it will in effect deprive her of her ownership of the suit land. That therefore the Applicant has an arguable case worth consideration by the appellate court.

The Applicant in this case, through Miscellaneous Application No. 03 of 2022, unsuccessfully sought to assert her claim of ownership of land that had been the
10 subject matter in a suit where she had not been a party, through an application for Review, at the point of execution. I believe that the claims of the Applicant can be better addressed through a fresh suit filed by the Applicant against the 1st Respondent. However, I cannot deny the Applicant leave to appeal simply because I believe my decision was correct. The applicant has a right to test the correctness of
15 this decision. Prima facie it appears that there are grounds of appeal which merit serious judicial consideration. There is need to protect the Applicant's right of appeal and for attaining the ends of justice in the instant case. I am therefore satisfied that in the circumstances of this case, the Applicant has presented grounds that warrant grant of leave to appeal to the Court of Appeal. The application succeeds. The
20 application is allowed with no order as to costs.

I so order.

25 Vincent Wagona

High Court Judge / Fort-portal

31.10.2022