

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MJASIRI, J.A., MWARIJA, J.A., AND MWAMBEGELE, J.A.)

CIVIL APPLICATION NO. 267/01 OF 2016

AHMED HASSAN SHARIFF APPLICANT

VERSUS

1. WINSTON SUGU

2. VOLSTAN TESHA

3. KURTHUM A. MANSOUR RESPONDENTS

4. ROLF HESSE

**(Application for leave from the decision of the High Court of Tanzania
at Dar es Salaam)**

(Wambura, J.)

dated the 19th day of June, 2015

in

Land Appeal No. 43 of 2014

RULING OF THE COURT

3rd July & 19th Sept. 2017

MJASIRI, J.A.:

The Applicant, Ahmed Hassan Shariff has, by way of a notice of motion, lodged this application in Court under section 5 (1)(c) of the Appellate Jurisdiction Act [Cap 141, R.E. 2002], the Act, and Rules 45 (b), 49 (1) and (3) of the Tanzania Court of Appeal Rules, 2009, the Court Rules, seeking to be granted leave to file an appeal to this Court against the decision of the High Court (Land Division.) The application is supported by the affidavit of the applicant.

At the hearing of the application, the applicant was represented by Mr. Leonard Manyama, learned advocate, while the respondent had the services of Mr. Living Kimaro, learned advocate. Both counsel asked the Court to adopt the affidavit and affidavit in reply and written submissions which were filed by the parties prior to the hearing date, in support of their case.

Having carefully considered the rival arguments presented by counsel, we would like to make the following observations: According to the applicant's affidavit, and submissions, there are legal issues to be determined by the Court of Appeal, namely whether or not the cause of action accrued on August 14, 1994 and whether or not Land Application No. 92 of 2012 which was filed in the District Land and Housing Tribunal was time barred. He therefore asked the Court to grant leave to the applicant so that these legal issues could be determined.

Mr. Kimaro on his part, opposed the application. According to him there was no point of law to be considered as the legal issues in question were considered by the two lower courts. Mr. Kimaro made reference to **Harban Haji Mosi and Another v Omar Hilal Seif and Another** Civil Reference No. 19 of 1997 and **British Broadcasting Corporation v Eric Sikujua Ng'maryo**, Civil Application No. 133 of 2004 (both unreported). He stated that leave to appeal is not automatic, and it is the discretion of the Court which should be judiciously

exercised, where the grounds of appeal raise issues of general importance or a novel point of law.

We on our part, are of the considered view that since there are some legal issues for determination, leave should be granted to the applicant to enable him to appeal to the Court of Appeal. The applicant has exercised his right under Rule 45 (b) of the Court Rules after leave was refused by the High Court. He has already sought and had been granted extension of time to file his application for leave. We therefore, allow the application and grant leave to the applicant to appeal to the Court of Appeal with costs to the applicant.

Order accordingly.

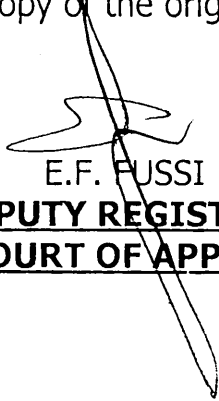
DATED at DAR ES SALAAM this 6th day of September, 2017.

S. MJASIRI
JUSTICE OF APPEAL

A.G. MWARIJA
JUSTICE OF APPEAL

J.C.M. MWAMBEGELE
JUSTICE OF APPEAL

I certify that this is true copy of the original.


E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL