

IN THE COURT OF APPEAL OF TANZANIA

AT IRINGA

(CORAM: MWARIJA, J.A., KWARIKO, J.A., And MWAMPASHI, J.A.)

CIVIL APPLICATION NO. 137/13 OF 2020

MARKUS KINDOLE APPLICANT

VERSUS

BURTON MDINDE RESPONDENT

**(Application for leave to appeal to the Court of Appeal of Tanzania against
the Judgment of the High Court of Tanzania at Iringa)**

(Matogolo, J.)

dated the 26th day of July, 2019

in

Land Appeal No. 10 of 2017

RULING OF THE COURT

28th September & 1st October, 2021

MWARIJA, J.A.:

The applicant, Markus Kindole was the respondent in a land dispute filed by the respondent herein, Burton Mdinde, in Ng'uruhe Ward Tribunal (the Ward Tribunal). He filed that application against the applicant claiming for a piece of land measuring one acre (the dispute land). On 19/11/2013, the Ward Tribunal decided the dispute in favour of the respondent. It declared him the rightful owner of the dispute land. Aggrieved, the applicant unsuccessfully appealed to both the District Land and Housing Tribunal, Iringa (the DLHT) and the High Court.

Consequently, the respondent filed an application, Misc. Application No. 101 of 2015 in the DLTH applying for execution of the decision of the Ward Tribunal. He sought, among other orders, that the applicant's house be demolished. The applicant raised an objection against that application, contending that the house which the respondent had applied to be demolished, is not situated on the dispute land. The objection was overruled by the DLHT in its ruling dated 29/3/2017.

Dissatisfied with the ruling of the DLHT, the applicant appealed to the High Court vide Land Appeal No. 10 of 2017. That appeal was however, dismissed on 26/7/2019. Undaunted, the applicant desired to appeal to this Court and therefore, on 7/8/2019 he instituted a notice of appeal. Thereafter, he filed in the High Court, an application for leave to appeal. Having heard that application, the High Court (Matogolo, J.), dismissed it for want of merit. The learned Judge found that there was no point of law which merits consideration by the Court of Appeal.

The applicant was further dissatisfied by the refusal by the High Court to grant him leave to appeal. He has thus come to this Court by way of a second bite under Rule 45 (b) of the Tanzania Court of Appeal Rules, 2009 as amended. In his notice of motion, he prays for the following:

- "1. This Hon. Court be pleased to grant leave to [the] applicant to appeal to the Court of Appeal of Tanzania against the decision made by Matogolo, J. in Land Appeal No. 10 of 2017 delivered on the 26th day of July, 2019.*
- 2. Costs of this application be borne by the respondent.*
- 3. Any other order the court may deem fit and just to grant."*

The application is supported by an affidavit sworn by the applicant on 3/3/2020. In paragraph 6 of his affidavit, he states as follows:

"That . . . the house ordered by the court to be demolished was not part and parcel of the disputed piece of land nor was there an order of the trial Ward Tribunal to that effect. Furthermore, both the District Land and Housing Tribunal and the High Court failed to consider the reason why the trial Ward Tribunal did not order demolition of my house"

On his part, the respondent resisted the application through his affidavit in reply filed on 2/4/2020. In paragraph 6 of that affidavit, he states as follows:

"That, [the] contents of paragraph 6 are vehemently disputed. The respondent avers that

the house was ordered to be demolished by the executing court (District Land and Housing Tribunal for Iringa) as seen through Drawn Order after the Ng'uruhe Ward Tribunal [had] decided in favour of the respondent. The demolition was the result of the application by the respondent to execute the Decree [issued] by Ng'uruhe Ward Tribunal . . . which the District Land and Housing Tribunal and High Court took into consideration."

At the hearing of the application, the applicant appeared in person, unrepresented while the respondent was represented by Mr. Cosmas Kishamawe, learned counsel. The applicant made brief submission. He adopted the contents of his notice of motion and the affidavit and proceeded to stress that he is intending to appeal to this Court against the decision of the High Court which dismissed his appeal, in which he was challenging the ruling of the DLHT. He reiterated his contention that his house, which the DLHT has ordered to be demolished in execution of the decision of the Ward Tribunal, is not on the dispute land.

In reply to the submission made by the applicant, Mr. Kishamawe argued that the application is not tenable. At first, the learned counsel based his argument on s. 47 (3) of the Land Disputes Courts Act [Cap. 216 R.E. 2019] (the Act). He intended to show that the application is misconceived because the dispute originated from a Ward Tribunal. Section 47 (3) of the Act requires that, where an appeal originates from

a Ward Tribunal, the appellant has to seek and obtain from the High Court, a certificate of point of law before the filing of the appeal. When his attention was drawn to the fact that the decision giving rise to this application originates from Misc. Application No. 101 of 2015 which was heard by the DLHT in its original jurisdiction, Mr. Kishamawe dropped that line of argument. He then urged the Court to determine the application as it would deem appropriate.

In rejoinder, the applicant did not have any useful arguments to add to his earlier submission. He left the matter to the Court to determine it as would find just.

In determining the only issue which arises in this matter; that is, whether or not the application has merit, what is to be ascertained is existence or otherwise of a point of law worth consideration by the Court.

– See for example, the cases of **Mariam Mula Letifhussein & 2 Others v. Mohamed Hatibu Mbwana**, Civil Application No 5 of 2014 (unreported) and **Nurbhai N. Rattansi v. Ministry of Water Construction, Energy, Land and Environment & Another** [2005] T.L.R 220. In the latter case, the Court had this to say on that principle:

"In determining an application for leave to appeal to the Court of Appeal, the Court must ascertain if there is legal point worth being considered by the Court of Appeal."

We have considered the respective affidavits of the parties and their submissions. Although from the nature of the proceedings in the DLHT, the competence of the appeal giving rise to the impugned judgment might be doubtful, nevertheless, we do not find the point on which the applicant has based his application to be worth consideration by the Court. His complaint is about the location of the house, thus raising a point based on a matter of fact. As stated above however, for an application for leave to appeal to this Court to be granted, the applicant must establish existence of a point of law which deserves consideration by the Court.

Since therefore, no point of law worth consideration by the Court has been established, the application lacks merit. It is thus hereby dismissed with costs.

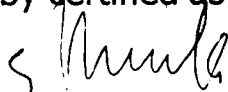
DATED at IRINGA this 1st day of October, 2021.

A. G. MWARIJA
JUSTICE OF APPEAL

M. A. KWARIKO
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

The Ruling delivered this 1st day of October, 2021 in the presence of Mr. Benedict Mtarangu – son in law of the Applicant and in the absence of the Respondent duly notified is hereby certified as a true copy of the original.


S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL