

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

(CORAM: WAMBALI, J.A, SEHEL, J.A. And KIHWELO, J.A.)

CIVIL APPLICATION NO. 389/17 OF 2020

MS AIRPORT PROPERTIES LIMITED APPLICANT

VERSUS

THE REGISTRAR OF TITLES 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

**(Application for leave to appeal to the Court of Appeal against the Judgment
of the High Court of Tanzania, Land Division at Dar es Salaam)**

(Maghimbi, J.)

Dated the 8th day of February, 2019

in

Miscellaneous Land Appeal No. 120 of 2015

RULING OF THE COURT

25th March & 11th April, 2022

WAMBALI, J.A.:

The applicant, MS. Airport Properties Limited lodged Miscellaneous Land Appeal No. 120 of 2015 before the High Court of Tanzania, Land Division at Dar es Salaam against the respondents, The Registrar of Titles and the Attorney General. Particularly, the applicant was seriously aggrieved by the order of the first respondent that was issued under section 99 (i) (f)

of the Land Registration Act, Cap. 334 R.E. 2002 rectifying the register on property situated at Plot No. 190 Vingunguti Industrial Area Dar es Salaam City registered under Certificate of Title No. 29241, Land Office No. 47932. The respective appeal was supported by nine grounds of appeal.

At the High Court, the appeal was strongly resisted by the respondents. As it turned out, after parties contending submissions were heard and considered, in the end, the High Court (Maghimbi, J) found the applicant's appeal devoid of merit and consequently, she dismissed it in its entirety.

It is noted that the decision of the High Court did not satisfy the applicant, who subsequently lodged the notice of appeal to this Court to challenge it.

On the other hand, in view of the nature of the decision of the High Court, in terms of section 5(1) (c) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2019 (the AJA), the applicant had to obtain leave of the High Court or the Court before she formally lodged the appeal.

In the circumstances, the applicant initially lodged an application for leave to appeal before the High Court through Miscellaneous Land Application No. 111 of 2019. Unfortunately, after the High Court (Makani,

J) heard the parties' submissions an opinion was formed that the applicant had not advanced substantive points of law to deserve the requisite leave to appeal. Ultimately, the application was dismissed for lack of merit, hence the instant application before the Court.

The application which has been preferred as a second bite is premised under Rules 45(b) and 49(1) and (3) of the Tanzania Court of Appeal Rules, 2009 (the Rules) through the notice of motion supported by the affidavit deposed by Thomas Eustace Rwebangira, advocate for the applicant.

The application is strenuously resisted by the respondents through an affidavit in reply deposed by Pauline Fridoline Mdendemi, State Attorney in the Office of the Solicitor General.

At the hearing of the application, Mr. Thomas Eustace Rwebangira, learned advocate appeared for the applicant, whereas, Mr. Thomas Mahushi and Mr. Evellus Elias Mwendwa, learned State Attorneys entered appearance for the respondents.

When invited to address the Court, Mr. Rwebangira essentially adopted the notice of motion, the affidavit and the list of authorities lodged earlier on in Court in support of the application. Basically, he requested the Court to

consider among others, the impugned judgment and the proposed grounds of appeal contained in the notice of motion and paragraph 9 of the affidavit in determining the application. Indeed, the learned advocate submitted that through the notice of motion and the supporting affidavit, the applicant has amply demonstrated that there are arguable points of law in the proposed grounds of appeal to contest the decision of the High Court in Miscellaneous Land Appeal No. 120 of 2015. To support his contention he relied on the decisions of the Court in **Mussa Chande Jape v. Moza Mohamed Salim**, Civil Appeal No. 141 of 2018; **Hamis Mdida and Another v. The Registered Trustees of Islamic Foundation**, Civil Appeal No. 232 of 2018; **British Broadcasting Corporation v. Eric Sikujua Ng'maryo**, Civil Application No. 138 of 2004 and **Kadili Zahoro (Administrator of the Estate of the late Bahati Mponda and Another v. Mwanahawa Selemani**, Civil Application No. 137/01 of 2019 (all unreported), which outlines some of the conditions under which an application for leave can be granted by the Court.

In the end, Mr. Rwebangira prayed that the application be granted on the basis of the proposed grounds with costs.

Rejoining, Mr. Mahushi and Mr. Mwendwa, who, both on different occasions addressed the Court in opposing the application, similarly adopted the affidavit in reply and the list of authorities lodged in Court earlier on and urged us to dismiss the application with costs on the contention that it lacks merit.

Specifically, relying on paragraph 7 of the affidavit in reply which is a response to the applicant's proposed grounds of appeal on paragraph 9 of the affidavit, learned State Attorneys firmly submitted that the applicant has not demonstrated sufficiently that there is any substantive arguable point of law to convince the Court to exercise its discretion judiciously to grant the application for leave to appeal.

Incidentally, in support of their arguments, learned State Attorneys relied on the decisions of the Court in **Bulyanhulu Gold Mine Limited and Two Others v. Petrolube (T) Limited and Another**, Civil Application No. 364/16 of 2017 (unreported) and also, **Kadili Zahoro and Another v. Mwanahawa Selemani** and **British Broadcasting Corporation v. Eric Sikujua Ng'maryo** (Supra) which were also referred by the applicant's counsel in his submission as alluded to above.

In the result, in the light of the learned counsel submissions, it was prayed on behalf of the respondents for the dismissal of the application with costs.

Having heard the parties' counsel submissions and thoroughly scrutinized the record of the application before us, we have no hesitation to state that the crucial matter for our determination is whether the application for leave to appeal is tenable.

We find it appropriate, at this point, to start our deliberation by acknowledging the position of the law with regard to the circumstances that may warrant the Court to grant an application for leave to appeal.

It is trite law that in an application for leave the applicant must demonstrate that there are some arguable points of law or matters of general importance emanating from the impugned decision to convince the Court exercise its judicious discretion to grant it. Basically, as we stated in **Kadiri Zahoro and Another v. Mwanahawa Selemani** (supra), in an application for leave to appeal: -

"Questions such as to the nature or significance of the intended point of law or fact to warrant the

decision of the Court of Appeal should prima facie be stated in the applicant's application."

[See also the holding of the Court in **British Broadcasting Corporation v. Eric Sikuja Ng'maryo** (supra)].

Indeed, in **Rutagatina C. L. v. The Advocates Committee and Clavery Mtindo Ngalapa**, Civil Application No. 98 of 2010 (unreported) the Court stated that: -

"An application for leave is usually granted if there is good reason, normally on a point of law or on a point of public importance, that calls for this Court's intervention."

Therefore, though the law does not provide for explicit factors which should be taken into account in deciding whether to grant leave to appeal (see **Wambele Mtamwa Shamte v. Asha Juma**, Civil Application No. 45 of 1999 (unreported)), what is crucially important is a determination whether there are prima facie grounds meriting an appeal to this Court or whether based on the material put forward by the applicant in the notice of motion and the supporting affidavit there exist a legal point that deserve consideration by the Court (see **Gandensia Mzungu v. I.D.M Mzumbe**,

Civil Application No. 94 of 1999 (unreported) and **Nurbhai N. Raltansi v. Ministry of Water, Construction, Energy, Land and Environment and Hussein Rajabali Hirji** [2005] T.L.R. 220).

Reverting to the circumstances pertaining to the instant application, there is no doubt that though counsel for the parties are in agreement with regard to the above expounded position of the law pertaining to the grant of leave to appeal, they differ greatly on whether the proposed grounds of appeal raise points of law or matters of importance for consideration by the Court.

On our part, having thoroughly scrutinized the impugned judgment of the High Court vis a viz the proposed grounds in paragraph 9 of the applicant's affidavit in support of the application and the counter arguments in the affidavit in reply, we are of the settled opinion that the raised points are worth consideration by the Court.

We unreservedly hold this opinion cognizant of the fact that at this stage, the Court should concern itself with the determination as to whether the proposed grounds of appeal raises points of law or issues of public importance without considering substantive issues that are to be dealt by the appellate court, as the learned counsel for the respondent through their

submission would have wished us to do (see **The Regional Manager – TANROADS Lindi v. DB Sharpriya and Company Ltd**, Civil Application No. 29 of 2012 (unreported)).

In the circumstances, we entirely agree with the learned counsel for the applicant that through paragraph 9 of the affidavit in support of the application, there are issues that deserve the attention of the Court. On the contrary, we respectfully disagree with the position taken by the respondents' counsel in their submissions and as emphasized in paragraph 10 of the affidavit in reply that, in the instant application there are no points of law or issues of importance for consideration by the Court.

From the foregoing deliberation, we ultimately find that based on paragraph 9 of the affidavit in support of the application, the following matters are worth consideration by the Court: -

- (a) Whether after making the findings that the applicant was condemned unheard, it was proper to dismiss the appeal.
- (b) Whether upon rectification of the Land Register by the Registrar of Titles, the applicant was entitled to compensation.
- (c) Whether the applicant had interest on the suit plot.

- (d) Whether it was proper for the High Court not to determine all the nine (9) grounds of appeal.

Having reached that finding, in the end, we find merit in the application. Accordingly, in terms of section 5(1) (c) of the AJA, we grant the applicant leave to appeal to this Court against the decision of the High Court in Miscellaneous Land Appeal No. 120 of 2015. We further hold that the applicant deserve costs of the application.

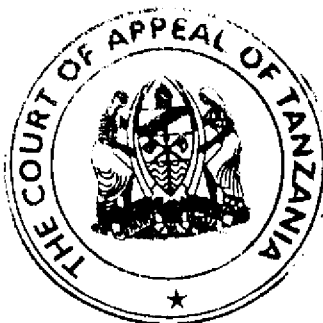
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
F. L. K. WAMBALI
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

P. F. KIHWELO
JUSTICE OF APPEAL

The Ruling delivered this 11th day of April, 2022 in the presence of Mr. George Ngemera, learned counsel for the applicant and Mr. Thomas Mahushi, learned State Attorney for the 1st and 2nd respondents is hereby certified as a true copy of the original.




A. L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL