

**IN THE COURT OF APPEAL OF TANZANIA  
AT ARUSHA**

**(CORAM: KWARIKO, J.A, SEHEL, J.A And GALEBA, J.A.)**

**CIVIL APPLICATION NO. 421/02 OF 2020**

**BENEDICTA SABASI.....APPLICANT**

**VERSUS**

**GLORY MUSHI .....RESPONDENT**

**(Application for leave to appeal against the decision of the High Court of  
Tanzania at Arusha)**

**(Moshi, J.)**

**dated the 30<sup>th</sup> day of March, 2017**

**in**

**Land Appeal No. 37 of 2016**  
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**RULING OF THE COURT**

23<sup>rd</sup> & 28<sup>th</sup> August, 2023

**SEHEL, J.A.:**

This is a ruling on an application for leave to appeal after the applicant, Benedicta Sabasi, had been denied the same by the High Court. Essentially, the applicant intends to impugn the decision of the High Court of Tanzania dated 30<sup>th</sup> March, 2017 in Land Appeal No. 37 of 2016 which overturned the decision of the District Land and Housing Tribunal (the DLHT) that declared the applicant a *bonafide* purchaser of the land, subject matter of the dispute.

The application is supported by an affidavit of the applicant herself. According to the affidavit and the record of the application, the

respondent sued the applicant and Boniface Emmanuel, not a party to this application before DLHT, alleging that on 12<sup>th</sup> April, 2006, she bought a piece of land measuring 22 meters length by 14 meters width, and, on 20<sup>th</sup> May, 2006, she bought another portion of land measuring 23 meters length by 12 meters width, both situated at Mbuga ya Chumvi area in Arusha (the disputed parcels of land). She therefore contended that on account of such purchase, she was the lawful owner of the disputed parcels of land.

She claimed that, after buying the disputed parcels of land, she handed the plots to her neighbour, one, Boniface Emmanuel for him to take care of them. But, to her surprise, in 2009, she found out that part of her land was sold to another person. She therefore entered in a settlement agreement with Bony Laisi for him to compensate her on the sold portion of land of about 8 paces. Since she was not compensated, she decided to sue the applicant and Boniface Emmanuel seeking, among other prayers, for a declaratory order that she was the lawful owner of the disputed parcels of land and an eviction order to be issued to the applicant.

The applicant denied the allegations and claimed that he lawfully occupied the disputed property which he bought from Saruni Emmanuel and not Boniface Emmanuel as alleged by the respondent.

Having heard both parties' evidence, the DLHT dismissed the respondent's case and declared the applicant a *bonafide* purchaser of a property measuring 22 paces length by 10 paces width. It further directed the respondent to file a suit against Bonny Laisi for recovery of her land measuring 23 meters by 8.9 meters.

The respondent was aggrieved by the finding of the DLHT. She filed an appeal to the High Court of Tanzania at Arusha (the High Court). In its decision delivered on 30<sup>th</sup> March, 2017, the High Court allowed the appeal by reversing the decision of the DLHT. It thus declared the respondent the lawful owner and ordered the applicant to be evicted from the disputed parcels of land. It also condemned the applicant to pay costs to the respondent.

That decision did not please the applicant, she thus lodged a notice of appeal on 12<sup>th</sup> April, 2017. Since the dispute arose from the DLHT, the applicant was required to obtain leave to appeal to the Court. As she was late, she sought, and was granted an extension of time to lodge the application for leave. Thereafter, the applicant filed an application for leave before the High Court through Miscellaneous Land Application No. 133 of 2018, but the same was refused. She has therefore filed the present second bite application.

When the application was called on for hearing, Mr. Asubuhi John Yoyo, learned advocate, appeared for the applicant, whereas, Mr. Hamis Mayombo, also learned advocate, appeared for the respondent.

Having taken the floor, Mr. Yoyo, first, adopted the affidavit in support of the application and the written arguments earlier on filed, he then highlighted few issues. He contended that leave to appeal is not automatic but it is within the discretion of the court to grant or refuse it. He added that leave to appeal is normally granted where the intended grounds of appeal appear to raise a novel point of law or show a *prima facie* or arguable case worth of consideration by the Court. It was his submission that in the present application, the grounds of the intended appeal advanced by the applicant have raised arguable issues meriting determination of the Court. He contended that the High Court strayed into error when it declared the respondent a lawful owner of the land, while it did not consider and determine the issue of *bonafide* purchaser which was the basis of the findings of the DLHT. He further argued that neither did the High Court consider and determine the issue of sanctity of the contract entered between the respondent and Bony Laisi where Bony Laisi undertook to compensate the respondent on the sold disputed parcels of land and the DLHT found that the applicant was not privy to the said settlement agreement. Mr. Yoyo argued therefore, that

since in its decision, the High Court did not consider these two points of law, the decision raises contentious issues, and for that reason, in terms of the decisions of the Court in the cases of **Lightness Damiani & 5 Others v. Said Kasim Chageka**, Civil Application No. 450/17 of 2020 [2022] TZCA 713 (18 November, 2022; TANZLII) and **Henry Julius Nyela v. Sauda Mtunguja Rajabu**, Civil Application No. 514/17 of 2020 [2023] TZCA 115 (14 March, 2023; TANZLII), the application is grantable. He therefore beseeched the Court to grant it.

At the outset, Mr. Mayombo explained that the respondent did not file affidavit in reply because she is not opposing the application on the facts but on points of law.

Responding to the application, Mr. Mayombo acknowledged that the High Court did not discuss the issues of *bonafide* purchaser and sanctity of the contract because, he said, they were not part of the grounds of appeal. He added that although they were not grounds of appeal, the applicant was not barred by any law in raising them before the High Court when the appeal was being heard. Further, the learned counsel for the respondent supported the decision of the High Court which overturned the decision of the DLHT by arguing that since the respondent is not barred by any law in impleading a party to the suit, the DLHT erred in its finding when it directed the respondent to sue

Bony Laisi. With that submission, the learned advocate for the respondent prayed that the application be dismissed with costs.

The learned advocate for the applicant briefly rejoined that, given that, the issues of *bonafide* purchaser and sanctity of the contract were the basis of the decision of the DLHT and they were the centre of the dispute between the parties, being the first appellate court, the High Court ought to have considered and made its own finding of facts and law. He therefore reiterated his prayer that the Court be pleased to grant the application.

We have dispassionately considered the notice of motion and the founding affidavit as well as the written submissions of the applicant and the oral submissions made by the counsel for the parties. As stated earlier, the present application has its genesis from the DLHT as such, in terms of section 47 (2) of the Land Disputes Courts Act, Cap. 216 and rule 45 (b) of the Tanzania Court of Appeal Rules, 2009 (the Rules), an appeal arising from the decision of the High Court in the exercise of its appellate jurisdiction is appealable with leave of the High Court or the Court.

We gather from the submissions of counsel for the parties that they are both in agreement on the principles governing determination of

applications for leave to appeal. It is settled that, grant of leave to appeal is within the discretion of the court and it can only be granted where the grounds of the intended appeal raise arguable issues in the appeal. This is the position we stated in the case of **British Broadcasting Corporation v. Eric Sikujua Ng'imaryo**, Civil Application No. 133 of 2004 [2005] TZCA 50 (8 September, 2005; TANZLII) as follows:

*"Needles, to say, leave to appeal is not automatic. It is within the discretion of the court to grant or refuse leave. The discretion must, however be judiciously exercised on the materials before the court. It's a matter of general principle, leave to appeal will be granted where the grounds show a prima facie or arguable appeal.... However, where the grounds of appeal are frivolous, vexatious useless or hypothetical, no leave will be granted".*

Further, in the case of **Harban Haji Mosi & Another v. Omari Hilal Seif & Another** [2001] T.L.R. 409, the Court said:

*"Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceedings as a whole reveal disturbing features as to require the guidance of the Court of Appeal. The purpose of the provision is therefore to spare the court the spectre of unmeriting*

*matters and to enable it to give adequate attention to cases of true public importance."*

From the above position of the law, what stands out for our determination in the present application is, by looking at the intended grounds of appeal, whether the applicant has sufficiently demonstrated that his intended grounds of appeal qualify as arguable issues meriting the attention of the Court.

It was the submission of the counsel for the applicant that, the applicant intends to challenge the decision of the High Court on the principle of *bonafide* purchaser and the doctrine of privy of contract which were the basis of the findings of the DLHT but not considered by the High Court. On the opposite side, although, Mr. Mayombo agreed that the High Court did not consider these issues, he was of the firm view that the High Court made a correct finding by reversing the decision of the DLHT. With due respect to such submission of Mr. Moyombo, at this stage, we are neither required to look at, nor make a finding on whether the High Court was right or wrong in its decision.

On our part, having carefully scrutinized the judgments of the DLHT and High Court, we are of a considered view that the intended grounds of appeal advanced by the applicant raise contentious issues meriting determination of the Court. Our position is further fortified by



the contention made by the learned counsel for the respondent that the High Court was right in its decision. In that respect, we find that the applicant has sufficiently demonstrated that there is an arguable appeal.

At the end, we find merit in the application. We therefore invoke the provisions of rule 45 (b) of the Rules and grant the applicant leave to appeal to the Court. Costs of this application shall abide by the outcome of the intended appeal.

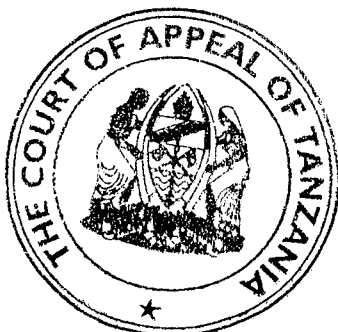
**DATED** at **ARUSHA** this 25<sup>th</sup> day of August, 2023.

M. A. KWARIKO  
**JUSTICE OF APPEAL**

B. M. A. SEHEL  
**JUSTICE OF APPEAL**

Z. N. GALEBA  
**JUSTICE OF APPEAL**

The ruling delivered this 28<sup>th</sup> day of August, 2023 in the presence of Mr. Asubuhi John Yoyo, counsel for the appellant and the respondent in person, is hereby certified as a true copy of the original.



*xatualus*  
C. M. MAGESA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**