

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA

MISCELLANEOUS LAND APPLICATION NO. 32 OF 2018

(Vide Land Appeal the High Court of the United Republic of Tanzania, Land Appeal No. 50 of 2016, based on District Land and Housing Tribunal for Manyara at Babati, Application No. 28 of 2012)

1. CHRISTINA JOHN 2. TABU TSINO 3. HAWA TSINO	} APPLICANTS
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VERSUS

IDD BAGHAYORESPONDENT

RULING

17/102018

MWENEMPAZI, J.

The applicants and the Respondent had a legal dispute in the District Land and Housing Tribunal which was determined in favour of the respondent. Being aggrieved by the decision of the trial tribunal the applicant filed an appeal in this court before Hon. Moshi J. whose decision was again in favour of the respondent. They want to appeal to the Court of Appeal.

It is a requirement of law that an appeal to the court of appeal in land dispute must be filed after a party has acquired a leave of the High Court under the

provisions of Section 47(1) of the Land Disputes Courts Act, Cap 216 which provides as follows:-

"Any person who is aggrieved by the decision of the High Court (Land Division) in the exercise of its original, revisional or appellate jurisdiction, may with the leave of the High Court (Land Division) appeal to the Court of Appeal in accordance with Appellate Jurisdiction Act.

The chamber summons is supported by a joint sworn affidavit of Christina John, Tabu Tsino and Hawa Tsino the applicants in it. The applicants state that they duly filed a notice of Appeal to declare their intention to appeal and applied for the certified copies of proceedings, judgment and decree pertaining to the land appeal case whose judgment they are intending to challenge. It is unfortunate they obtained the documents late, thus they had to apply for an order extending time for them to apply for leave to appeal to the Court of Appeal. This was in the Miscellaneous Land Application No. 61/2017. They were allowed and given fourteen (14) days to file an application for leave. Hence this application.

The applicants in their written submission have averred that they are aggrieved by both decision in the District Land and housing Tribunal in its original jurisdiction and High court on appeal. The property they are fighting for was being used by them to make a living for almost the whole period of their lives, almost forty years.

They also state that their application is for the reason to comply with the legal requirement under section 47(1) of the Land Disputes Courts Act,

cap 216 and that their grounds are containing legal and factual issues to be determined by the Court of Appeal.

The application has been opposed by the respondent that there are no issues to be determined by the Court of Appeal. Also, that the application as such is a waste of time of the court. Since the applicant have failed to show merit on the intended appeal.

The reason, as he says in his submissions is simple, the issues raised in the applicant's affidavit and in the annexed memorandum of the intended appeal were well dealt with by the High Court. The applicant ought to have explained in their written submission as to why the High Court should grant them leave. In their rejoinder the applicants have responded that they are intending to appeal so that the Court of Appeal will hear and determine it.

It is the position of law that in a land dispute, leave to appeal to the court of appeal under section 47(1) of Land Disputes Courts Act, Cap 216 is necessary and or Mandatory for appeal against the decision of the High Court in its original, revisional or appellate jurisdiction.

I have considered the submissions and the law, and observed that the applicants intend to exercise their right of appeal in law so that they may be heard and see that Justice is done them. Holding that the intended appeal has no merit will be to do a job not assigned to me. It will also be to pre-empt the applicants and hinder them to see to it that they have been given their right to be heard by the superior court.

I find it, in the interest of Justice, the applicants should be given an opportunity to express their grievance before a superior court and see justice

is done to them. Therefore, leave to appeal to the Court of Appeal is granted with costs.

It is so ordered.




T. MWENEMPAZI
JUDGE
17/10/2018