

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

MISC. APPLICATION No. 17 OF 2019
(Arising from the Land Appeal No. 31 of 2017 H/C Shinyanga)

LUFEGA HILILA.....APPLICANT

VERSUS

MAGANGA IYUMBU.....RESPONDENT

RULING

Date of the last Order: 22nd April, 2020

Date of the Ruling: 10th July 2020

MKWIZU, J.:

The applicant is aggrieved by the decision of this court in Land Appeal 31/2017 originating from the District Land and Housing Tribunal of Shinyanga in Land Application No. 21/2017. He has moved this court under the provisions of Section 47(2) of the Land Disputes Courts Act, Cap. 216 R.E 2019 for the following orders:

(a) this honorable court be pleased to grant leave to the applicant to appeal to the court of appeal of Tanzania against the Judgement and decree of the High court of Tanzania at Shinyanga Honourable madam Justice V.L. Makani dated 17th April, 2019 in Land appeal No. 31 of 2017.

(b) Costs of this application be provided for

(c) Any other and further relief as this Honourable Court may deem fit and just to grant.

The application was supported by an affidavit of the applicant's counsel, Mr. Audax Theonest Constantine dated 7/05/2019. The application was strongly objected by the counter Affidavit which was deposed to by the respondent, Maganga Iyumbu on 13th June, 2019.

In this court both parties were represented, Mr. Audax Constantine advocate represented the applicant while advocate Paul Kaunda was for the respondent.

Mr. Audax first adopted the affidavit in support of the application. He then submitted that the grant of the application for leave, is guided by the principles as decided in the case of **Hamis Mdida and another V. the registered Trustees of Islamic foundation**, civil appeal No 232 of 2018. This court is required to look into the proposed grounds of appeal and say whether there are arguable grounds of appeal or not. He said, the issue at the trial tribunal was whether applicant sold his share in the suit

land to the respondent. This controversy was not decided neither by the trial tribunal nor the High court. On his third intended ground of appeal, Mr Audax contended that, the High Court stated that there was an oral agreement between the parties in respect of the interest of the applicant on the suit land, this again did not feature in the pleadings that were presented before the court nor made part of the discussion and submissions before the trial tribunal.

In the fourth ground, he argued that, it was the High court's decision that applicant relinquished his share on the suit property after he was given seven cattle. This as well, stated Mr. Audax, was not part of the pleadings at the tribunal. He summed up that, the decisions of the court and the proposed grounds of appeal looked together raises arguable grounds of appeal at the Court of Appeal.

Mr. Kaunda for the respondent straight away cited to the court the case of **BBC Vs Eric Sikujua Ngimaryo**, Civil Application No 138 of 2004 arguing that leave is grantable where the proposed appeal stands reasonable chances of success or where but not necessarily, the

proceedings as a whole reveal such disturbing features as to require guidance of the Court of Appeal.

He suggested that, the grounds brought by the applicant are different from what was decided by Hon. Makani J. The grounds proposed are new issues which were not part of the High Court's decision. He invited this court to go into the proceedings and the decisions and see whether the grounds raised are merited or not. He therefore prayed for the dismissal of the application with costs.

In rejoinder, Mr. Audax reiterated his submission in chief.

I have carefully read the averments in the affidavit in support of the application and at the same time gone through the counter affidavit filed by the respondent. It should be stated from the outset that for an application for leave to be granted, there must be points of law worth consideration by the Court of Appeal. This is the position in the case of **Rutagatina C.L. VS The Advocates Committee and Clavery Mtindo Ngalapa**, Civil Application No.98 of 2010 His Lordship Justice Msoffe (as he then was) stated that;

"An application for leave is usually granted when there is a good reason, normally on point of law or on point of public importance that calls for the Court of Appeal intervention".

Basing on the facts averred in the affidavit especially paragraph 4 (i)-(iv), I am satisfied that the applicant has established that there is a point of law needed for consideration by the Court of Appeal.

I therefore grant leave to appeal to the Court of Appeal as sought.

I make no Orders as to costs.

DATE at SHINYANGA this 10th day of July, 2020


E.Y. MKWIZU
JUDGE
10/7/2020

The seal of the High Court of Zimbabwe is circular. It features a central emblem with a shield and a star above it. The words "THE HIGH COURT OF ZIMBABWE" are inscribed around the perimeter of the seal, with a small star at the bottom center.