

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

MISC. LAND APPLICATION No. 02/2020

*(Arising from the High Court of Tanzania Land Appeal No. 63 of 2015
before Hon. Ismail, J, originating from Land Application No. 60 of 2012 in
the District Land and Housing Tribunal of Mwanza)*

PAUL HUMULI..... APPLICANT

VERSUS

MWANZA CITY COUNCIL 1ST RESPONDENT

TATU BAKARI 2ND RESPONDENT

IBRAHIM BAKARI..... 3RD RESPONDENT

RULING

14th May - 01st July, 2020

TIGANGA, J

In this Application this court has been moved under section 47(1) of the Land Disputes Courts Act [Cap 216 R.E 2019], section 5 of the Appellate Jurisdiction Act [Cap 141 R.E 2019] and any other enabling provision of the laws.

The orders sought are for leave to appeal to the Court of Appeal of Tanzania against the decision of the High Court of Tanzania at Mwanza in Land Appeal No. 63 of 2015, before Hon. Ismail, J dated 3rd day of

December 2019, the costs of this application and any other order as this court may deem fit and just to grant.

The application was preferred by the Chamber Summons supported by an affidavit of the applicant. In the sworn affidavit, the applicant came up with one issue which is whether the trial tribunal and the High Court were proper to justify the illegal compensation founded on injustice valuation.

With the leave of the court, parties argued their appeal by way of written submissions. Parties filed their respective submission on time. In the submission in chief the issue which is greatly complained of is that evaluation upon which the decision for compensation was based was honoured about four years after the evaluation, which is against the legal requirement that compensation be done within six months after evaluation.

It is his submission that, that was against regulation 13 of the Land (Assessment of Value of Land for Compensation) Regulation. In his opinion, that is the ground for granting leave for the same issue to be considered by the Court of Appeal.

The respondent reminded the court of the principle that it is only where the court is satisfied that there is arguable point for the Court of Appeal to consider and determination. He cited the case of **Machenical Installation and Engineering Company Limited Vs Abubakari Ndexamaprero and Another** [1987] TLR 44 and that in the case of **Mosi and Another Vs. Omar Hilal Self and Another** [2001] TLR 409 at page 414 /415. He submitted that, the requirement from these authorities

have not been met, so the counsel for the respondent prayed for the same to be dismissed for want of merit.

In rejoinder, the applicant almost repeated what he submitted in the submission in chief and asked the application to be granted as prayed.

The provisions upon which the court has been moved do not provide for the criteria to be considered in the granting or refusing the leave to appeal to the Court of Appeal. However, case laws have sufficiently provided the guiding principles. In the case of **Harban Haji Mosi and Another Vrs Omar Hilal Seif and Another**, Civil Reference No. 19 of 1997 CAT, the following principles were laid down;

"Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily the proceedings as a whole reveals such disturbing feature 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"

In the authority of **British Broadcasting Cooperation Vrs Erick Sikujua Ng'maryo** Civil Application No.138 of 2004 (CAT) - Dar Es Salaam (Unreported) (which was cited and relied on in the decision of **Swiss Port Tanzania Ltd Vs Michael Lugaiya** HC –DSM Civil Appeal No.111/2010 (Un reported) where His Lordship Juma, J (as he then was) it was held inter alia that;

"Needless to say leave to Appeal is not automatic. It is within the discretion of the court to grant or refuse leave. The discretion should however be judiciously exercised and on the

materials before the court. As a matter of general principle, leave to appeal will be granted where the grounds of appeal raise issues of general importance or a novel point of law or 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."

Now, that being the argument by the parties, the issue is whether the conditions laid down in the above two cases and certainly other cases which have not been referred in this judgment have been met. It is my considered opinion that the conditions have been met in the sense that, the point raised in paragraph 5 (a) of the affidavit in support of the application suffices to be a point worthy of consideration by the Court of Appeal.

That said, the prayers are granted, leave to Appeal is granted as prayed in the Chamber summons, costs to be in due course.

It is so ordered.

DATED at MWANZA this 01st day of July, 2020



J. C. Tiganga

Judge

01/07/2020

Ruling delivered in open chamber in the presence of the parties on line, this 01/07/2020



J. C. Tiganga

Judge

01/07/2020

