

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

MISC.LAND APPLICATION NO. 39 OF 2017

(From the judgment of the High Court in Land Appeal No. 62 of 2016)

WILLIUM VINCENT MAEDA.....APPLICANT

VERSUS

HAPPINESS PATRICK..... RESPONDENT

(Suing through her next friend

LEOKADIA GASPAS CHARAHANI)

RULING

11/11/2019 & 14/2/2020

G.J. MDEMUSI;

This is an application for leave to appeal to the Court of Appeal made under the provisions of section 47(1) of the Land Disputes Courts Act, Cap.216 and Rule 45(a) of the Court of Appeal Rules, 2009 against the decision of this court (Makani J.) in land appeal No.62 of 2016. The application is supported by the affidavit of Mussa Kassim sworn on 18th of December 2017.

Background leading to this application may be stated that; in the District Land and Housing Tribunal of Shinyanga, the Respondent sued unsuccessfully the Applicant over ownership of a piece of land located at plot No.1466 block "L" Kahama. She became successful in appeal No.62 of 2016 (Makani J.) The Applicant was not happy with that decision, thus intends to appeal to the Court of Appeal on grounds as per paragraph 3 of the affidavit.

This application came for hearing before me on 11th of November 2019 in which the Applicant was represented by Mr. Mussa Kasim and the Respondent had the service of Mr. Frank Samwel, both learned Advocates. Submitting in support of the application, Mr. Kassim first sought adoption of the affidavit of the Applicant forming part of his submission. He submitted in ground one that, the District Council was to be made part to the proceedings so that could provide clarification between the two certificates of title issued in one land. He added that, non joinder of parties is a good ground for appeal.

As to the second ground, the learned counsel submitted that, the Respondent being a minor was not entitled to be granted a certificate of title. In ground three and four, it was his observation that, it was not proper for the relevant Authority to revoke right of occupancy for breach of conditions as the Respondent, being a minor, may not know if there are certain conditions got breached. He thus added that, the learned judge erred in applying the provisions of sections 45(4) of the Land Act,Cap.113. He finally cited the case of **British Broadcasting Corporation vs Erick Sikujua Ng'imaryo, Civil Application No.138 of 2004** (unreported) insisting that, there are good grounds for this court to grant leave to appeal.

Resisting the application, Mr. Frank Samwel, along with prayers that counter affidavit of the Respondent be adopted, stated also generally that, leave to appeal is not automatic and that points raised for leave to appeal must have been raised in the High Court. He added that, under the circumstances of this application, the Applicant was supposed to file a cross appeal. He thus observed that, there is nothing to be determined at appeal level, thus urged me to dismiss this application with costs.

Mr. Kassim rejoined briefly that, if this court determine the argument of the Respondent that the raised points were not the case in the High Court, it means this court will be exercising the function of the Court of Appeal on appeal. He thus reiterated his earlier position to have this application allowed.

Having heard submissions from the two counsels, one thing I share with both of them is on the settled legal position that, leave to appeal is not automatic. In the case of **British Broadcasting Corporation**(supra) at page 6-7, this settled legal position was stated in the following version;


*Needless 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 judiciously exercised and on the material 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.(see: **Buckle v Holmes** (1926) All ER Rep.90 at page 91).However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted.*

From the above legal principle, the Applicant in paragraph 3 of the affidavit as summarized above, raised the following points, **one** failure to join the Authority issued the certificate of title as a necessary part, **two**, declaring a minor a rightful owner of the suit premises regardless of her capacity to contract and **three** that, there was no need to issue notice of revocation to a minor. In my view, and as observed in the case of **British**

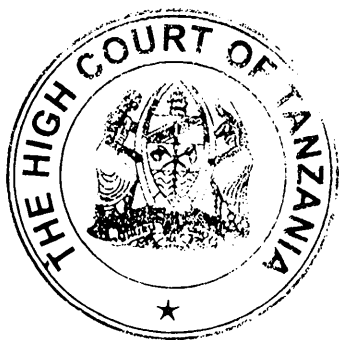
Broadcasting Corporation(supra), these grounds, as stated in paragraph three of the affidavit, raises issues of general importance and that there are points of law to be determined by the Court of Appeal.


In view thereof, this application is hereby allowed. Each part to bear own costs. It is so ordered.




Gerson J. Mdemu
JUDGE
14/02/2020

DATED at SHINYANGA this 14th day of February, 2020.




Gerson J. Mdemu
JUDGE
14/02/2020