

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

**MISCELLANEOUS LAND CASE APPLICATION NO. 33 OF 2019**

(C/F Miscellaneous Land Case Application No. 04 of 2019 High Court Moshi)

**ATHUMANI HAMISI BENTA ..... APPLLICANT**

**Versus**

**ISSA MOHAMED BENTA ..... RESPONDENT**

*Date of Last Order: 10<sup>th</sup> December, 2019*

*Date of Ruling: 6<sup>th</sup> March, 2020*

**RULING**

**MKAPA, J.**

The applicant, Athumani Hamisi Benta is seeking for leave to appeal to the Court of Appeal of Tanzania (the CAT) against the judgment of the High Court of Tanzania at Moshi (F.A. Twaib, J.) in Land Appeal No. 4 of 2019 dated, 24<sup>th</sup> July 2019. The application which is by way of chamber summons is supported by sworn affidavit of the applicant and is brought pursuant to section 47 (2) of the Land Disputes Courts Act, 2002 as amended by section 9 (b) of the Written Laws (Miscellaneous Amendments) (No.3) Act, 2018.

The respondent did not file the counter affidavit to object the application, he told the court that he supports the applicant's application.

In his nine paragraphs affidavit, particularly paragraph 6 - 9 the applicant averred the following;

6. That, Honourable Fauz Twaib, J. erred in law when he decided that the late Mohamed Benta Hamis and the Late Mohamed Benta represents one person without evidence to prove the same.
7. That, the honourable Fauz Twaib, J. erred in law when he failed to properly evaluate the evidences in the trial tribunal's records consequently, the following fatal irregularities emerged;
  - a. That, the documents which were admitted in evidence before the trial tribunal were both endorsed with the number and tittle of the suit, the name of the person producing the document and the date on which it was produced as per the law.
  - b. That, it is apparent on the trial tribunal's records that the trial chairman (T. J. Wagine) did not require the assessors present to give their written opinions before making his judgment as required by the law.

8. That, the applicant's intended appeal is subject to the point of law.
9. That, if this honourable court declines to grant leave for the applicant to appeal to the Court of Appeal of Tanzania, the Applicant shall suffer irreparable loss since he will not have the opportunity to manifest his constitutional right to appeal.

Brief background to this application is to the effect that in 2014 the respondent filed a Land Application No. 150 of 2014 at the District Land and Housing Tribunal of Moshi claiming declaration of legal ownership to a house with eight (8) rooms located at Soweto, Moshi in plot No. 168 DDD – 111 (suit property). He claimed to be an administrator of the estate of his father the late Mohamed Hamisi who passed away on 29<sup>th</sup> May 1991 and owned two properties including the suit property. The applicant is late Mohamed Hamisi's brother, and the suit property is in the deceased name but he claimed to be the one who purchased the same hence claimed its ownership.

The trial tribunal decided in favour of the appellant whilst the 1<sup>st</sup> appellate court decided in favour of the respondent hence this application. In determining this application for leave, the law is settled to the effect that leave to appeal is not automatic, it is discretionary. In order for the Court to exercise its discretion, it is

essential that it has to be furnished with sufficient contentious issues. The issues are obtained from the affidavit deposed in support of the application. Examining the affidavit sworn by applicant, I find it meritorious. In his nine paragraphs affidavit specifically the above reproduced paragraphs, they have disclosed contentious issues that need to be attended by the Court of Appeal. It is my considered view that the main issue for determination by the Court of Appeal is in relation to the legal ownership of the suit property between the appellant who claims to have purchased and developed the same and the respondent who claims that his deceased father owned the same through a registered title by his name.

It also caught my attention that the respondent once filed Misc. Civil Application No. 01 of 2019 against Yahaya Issa Kichenche seeking for leave to appeal to Court of Appeal. In the said application Yahaya Issa Kinchence claimed to be the one appointed to administer the deceased properties. Since I did grant leave I feel inclined to grant this application too so that parties' dispute can be determined once and for all by the highest Court of the country.

On the issue of leave to appeal, the Court of Appeal in **British Broadcasting Corporation V Eric Sikujua Ng'maryo**, Civil Application No. 133 of 2004 (Unreported) had this to say;

*"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 or useless or hypothetical, no leave will be granted."*

The same position was affirmed in **Saidi Ramadhani Mnyanga V Abdallah Salehe** [1996] TLR 74, where the court held *inter alia* that, for leave to appeal to be granted, the applicant must demonstrate that there are serious and contentious issues of law or fact fit for consideration by the Court of Appeal.

Given the nature of the existing feud between the parties which concerns deceased properties, and since the respondent has not objected this application, I am satisfied that, this application deserves the Court of Appeal's intervention hence I proceed to grant leave as prayed.

Dated and delivered at Moshi this 6<sup>th</sup> day of March 2020.



  
**S.B. MKAPA**

**JUDGE**

**06/03/20208**