

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**[LAND DIVISION]**  
**AT ARUSHA**

**MISC. LAND APPLICATION NO. 86 OF 2019**

*(C/f The High Court of Tanzania, Land Appeal No. 18 of 2012, Originating from the District and Land Housing Tribunal for Arusha, Land Application No. 12 of 2007)*

**ELIZABETH LOISUJAKI ..... APPLICANT**

***Versus***

**AGNESS LOISUJAKI ..... 1<sup>ST</sup> RESPONDENT**

**JUSTINE JOHN LEIYAN ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

*November 20 & December 14, 2020*

**Masara, J.**

Elizabeth Loisujaki, the Applicant, is moving the Court to grant her leave to appeal to the Court of Appeal against the Judgment and Decree of this Court, Massengi, J., in Land Appeal No. 18 of 2012, which was delivered on 24/9/2014. The application is made under section 47(2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] and is supported by the affidavit of Duncan Joel Oola, learned advocate for the Applicant. The Respondents opposed the application through a counter affidavit attested by Fadhil Thomas Nangawe, learned advocate for the Respondents.

Facts leading to this application, as gathered from the record available are as follows: The Applicant was the Respondent in Land Appeal No. 18 of 2012 before the High Court and the Applicant in Application No. 42 of 2007 before the District Land and Housing Tribunal for Arusha. The Applicant successfully

sued the Respondents in the trial Tribunal. In the High Court, the decision of the trial Tribunal was reversed and the Respondents were declared the lawful owners of the suit land. The Applicant was aggrieved, she filed a Notice of Appeal in the Court of Appeal on 23/10/2014. She then filed Misc. Application No. 228 of 2014 in this Court seeking leave to appeal to the Court of Appeal. In a ruling delivered on 2/4/2015, the Applicant's application for leave to appeal to the Court of Appeal was granted by my learned sister Dr. Opiyo, J. The Applicant lodged her appeal in the Court of Appeal, but the appeal was adjudged incompetent and struck out on 15/12/2017 on the ground that the leave granted by the High Court was invalid. Undaunted, the Applicant filed Misc. Land Application No. 29 of 2018 before this Court, Mwenempazi, J., seeking for extension of time to file Notice of Appeal out of time. In a ruling delivered on 7/9/2018, the application for extension of time to file the Notice of Appeal out of time was granted. Notice of Appeal was filed on 19/9/2018. The Applicant then filed the instant application on 4/11/2019 moving the Court to grant to her leave so that she can seek redress in the Court of Appeal.

At the hearing of the application, the Applicant was represented by Mr. Duncan Joel Oola, learned advocate while the Respondents enjoyed the services of Mr. Fadhil T. Nangawe, learned advocate. Hearing of the application proceeded through written submissions.

Mr. Oola erroneously filed submissions in respect of Misc. Land Application No. 120 of 2018 instead of the instant application. Upon realizing the error,

Mr. Oola wrote a letter to this Court seeking extension of time to file his written submissions. On 7/10/2020 the extension of time sought was granted for him to file the written submission within 7 days, an order which he complied with. However, Mr. Nangawe did not file reply submissions on the later submissions. This application will be determined basing on his submission filed on 7/9/2020.

In his submissions, Mr. Oola craved to adopt the affidavit in support of this application. Mr. Oola contended that the intended Appeal will be based on 5 grounds as per the annexed draft memorandum of appeal which raises serious points of illegality and irregularity calling on the Court of Appeal to rectify them. The learned advocate argued that the learned Judge, while composing the judgment, she found some issues which were not addressed by the parties. She proceeded without calling parties to address on those issues and proceeded to pronounce judgment against the Applicant, which is against rules of natural justice as the parties were not accorded the right to be heard. He cited the Court of Appeal decision in the case of ***Ausdrill Tanzania Ltd Vs. Mussa Joseph Kumili and Another***, Civil Appeal No. 78 of 2014 (unreported) to cement his argument.

On another ground, Mr. Oola submitted that the learned Judge pronounced two contradicting judgments in relation to same land. That in Land Appeal No. 57 of 2011 which was filed by the Applicant's young sister and decided by this Court, she decided that the same suit land belongs to the Applicant, in Land Appeal No. 18 of 2012, the same land was declared to be the lawful

property of the Respondents. Therefore, the counsel argued, the same subject matter which was decided by the same Judge but involving different parties has two different final decisions. It was Mr. Oola's contention that the impugned judgment raises serious points of illegality which constitute a good cause or sufficient reasons to grant the Applicant leave to appeal so that the Court of Appeal can correct the alleged illegality. He cited the case of ***David Naburi (as the Administrator of the Estate of the late Maeda Naburi) Vs. Stephen Sangu***, Misc. Land Application No. 960 of 2017 (unreported).

Basing on those arguments, Mr. Oola implored the court to grant the Applicant's application so that she can have an opportunity to be heard in the Court of Appeal. Further, he added that if the impugned decision is left to stand, it will cause a lot of confusion and uncertainty to the Court, the Tribunal as well as the parties.

On his part, Mr. Nangawe, likewise relied on his counter affidavit. He contended that, as a matter of law, for an application for leave to be granted the Applicant must show that there is a serious point of law to be determined by the Court of Appeal. Mr. Nangawe was of the view that in the instant application, the Applicant failed to show any sufficient ground warranting the grant of leave sought as deponed in paragraph 6 of the Respondents' counter affidavit. That the Applicant did not explain any illegality in her application and therefore it is not the duty of the Court to assist the Applicant in proving

her case, as there is no illegality apparent on record. On that basis, Mr. Nangawe calls upon the court to dismiss the application with costs.

I have dispassionately considered the affidavit in support of the Applicant's application, the written submissions made by her advocate as well the Respondents' counter affidavit and submissions. The issue I am tasked to determine is whether there are arguable grounds for the Applicant to be granted leave to appeal to the Court of Appeal.

At the outset, I must state that it is trite law that the High Court is vested with discretionary powers in granting prayers for leave to appeal to the Court of Appeal. However, such powers are to be exercised judiciously. In determining whether to grant the application or not the following criteria must be taken into consideration: Whether there is a point of law arguable in the Court of Appeal, that is whether there is an illegality warranting the intervention of the Court of Appeal so that the illegality is cured. In the case of ***Simon Kabaka Daniel Vs. Mwita Marwa Nyang'anyi & 11 Others*** [1989] TLR 64 it was stated inter alia that:

*"In application for leave to the Court of Appeal the application must demonstrate that there is a point of law involved for the attention of the Court of Appeal..."*

This position was reiterated by the Court of Appeal of Tanzania in the case of ***British Broadcasting Corporation Vs. Eric Sikujua Ng'maryo***, Civil Application No. 138 of 2004 (unreported) whereby, while quoting with approval its previous decision in ***Harban Haji Mosi and Another Vs.***

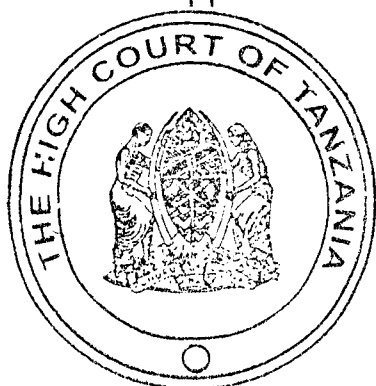
***Omar Hilal Seif and Another***, Civil Reference No. 19 of 1997 (unreported)

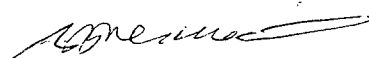
the Court held:

*"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 the guidance of the Court of Appeal. The purpose of the provision is therefore to spare the Court the specter of unmeriting matters and to enable it to give adequate attention to cases of true public importance."*

I have gone through the intended memorandum of appeal and the submissions made by the learned advocate for the Applicant. I am settled in my mind that there may be matters worth the determination of the Court of Appeal, including matters canvassed by Mr. Oola. Further note is taken in the Applicant's contention that there may be two contradicting judgments from the same Court concerning the same subject matter. I do not agree with Mr. Nangawe's contention that there is no apparent legal issue to be addressed by the Court of Appeal. I note that the submission by Mr. Nangawe related to the erroneous submissions which was later discarded by the counsel for the Applicant.

Taking into account what I have endeavored to explain hitherto, I find no apparent reason to deny the Applicant her right to appeal so that the Court of Appeal may address matters raised by the Applicant. In the event, I allow the application for leave as prayed. Costs shall abide to the outcome of the intended appeal.





Y. B. Masara

**JUDGE**

14<sup>th</sup> December, 2020