

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

MSC. LAND APPLICATION NO. 56 OF 2018

(Arising from land appeal No 33 of 2016 dated 30th November, 2018 of the High Court of Shinyanga at Shinyanya. By Hon. Madam Judge V. L. Makani, J)

DORCA GUYUAPPLICANT

VERSUS

GUYU MHINDI.....1ST RESPONDENT

KISUKE LUBACHA.....2ND RESPONDENT

RULING

*Date of last order: 03.03.2020
Date of Judgement: 27.03.2020*

E. Y. MKWIZU, J.:

The applicant Dorca Guyu filed an application for leave to appeal to the court of appeal against the decision of the High court in Land appeal No 33 of 2016 dated 30th November, 2018. The application is by way of a chamber summons predicated under the provisions of section 47 (1) of the **the Courts (Land Disputes Settlements) Act (Cap 216 R.E 2002)** and **Rule 45 (a) of the Tanzania Court of Appeal Rules, 2009** as amended by the Government Notice No. 362 of 2017.

The affidavit in support of the prayers canvassed in the chamber summons was sworn by the Applicant advocate, Mr Frank Samwel. Upon duly served with the Application, Mr Geoffrey Reuben Kishosha, Counsel for the respondents filed a counter affidavit to oppose the Application.

When the application came for hearing on 3rd day of March 2020, the applicant had services of Mr Frank Samwel advocate while the respondent were represented by Mr Geoffrey Reuben Kishosha.

In support of the application, Mr. Frank adopted the affidavit in support of the application. He added that, they are intending to appeal to the court of appeal on two grounds enumerated in paragraph five of the affidavit. He finally prayed the application to be granted.

On his part, Mr Kishosha resisted the application. He contended that, the applicant has failed to show legal grounds under which this application should be granted. The grounds enumerated in paragraph 5 of the affidavit in support of the application were considered by the by the High court at page 6 and 7 of the high court's decision. He generally urged this court to find that the application is not substantiated and proceed to dismiss it.

On his rejoinder Mr, Frank stated that the respondent's counsel was trying to argue the intended appeal in disguise. He reiterated on his earlier prayer on **Section 47 (1) the Courts (Land Disputes Settlements) Act Cap 216 R.E 2002** to which this application relates, requires the applicant to apply for leave from this court to lodge an appeal to the Court of Appeal.

The Court has subjected the chamber summons ,affidavits for and against the application and the submissions of both parties into close scrutiny. It is a settled position of the law that in order for this court to grant an application for leave to appeal to the court of appeal, the applicant must demonstrate that there is prima facie merits on grounds of appeal intended to be challenged to the Court of appeal. In the case of **Gaudensia Mzungu V. The IDM Mzumbe**, Civil application No. 94 of 1999,CAT (Unreported). It was held that:-

"...leave is not granted because there is an arguable appeal. There is always an arguable appeal. What is crucially important is whether there is a prima facie grounds meriting an appeal to this court."

(See also: **Sango Estate LTD and Others V, Dresdner Bank AG** (1971) 1EA 17 and **Nurbhain Rattansi vs Ministry of Water Construction Energy Land And Environment and Another** [2005] TLR 220.)

The main issue before me now is whether there is arguable points of law to be considered by the Court of Appeal?

Reading the said grounds as stated in paragraph 5 (i) and (ii) of the affidavit in support of the application, it is said that:

- i) That, the learned judge erred in law when she held that the learned chairman had no jurisdiction to entertain the findings as to whether the parties were married and whether the disputed property was acquired jointly by the spouse
- ii) That, the learned judge erred in law when she failed to evaluate properly the submission of the applicant which were adduced during the hearing of the said appeal

Upon perusal of the impugned Judgment of this Court and in the light of the authorities cited above, it is my opinion that, this application presents contentious legal points that call the attention of the Court of

Appeal. For that reason, I grant the application for leave to Appeal to the Court of Appeal of Tanzania. I make no orders as to costs.

DATED at **SHINYANGA** this 27TH day of March 2020.

