

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

AT MOSHI

MISC. LAND APPLICATION NO. 44 OF 2020

(C/F Land Appeal No. 08/2019 High Court of Tanzania at Moshi; Originating from Application
No. 128/2016 Moshi District House Land and Housing Tribunal)

PETER KIMAROAPPLICANT

VERSUS

SAMWEL MALEO.....RESPONDENT

RULING

21/12/2020 & 12/02/2021

MWENEMPAZI, J:

The applicant, Peter Kimaro brought this application under section 47 (2) of the Land Disputes Courts Act, Cap. 216 and Section 5(1) (c) of the Appellate Jurisdiction Act, Cap 142 and Rule 45 (a) of the Tanzania Court of Appeal Rules, 2009 praying for the following orders:

1. That may this Honorable Court be pleased to grant leave to the applicant to appeal to the Court of Appeal of Tanzania against the judgment of the High Court in Land Appeal No. 8/2019 delivered on 26th June, 2020 by Honourable Mkapa, J.
2. Any other relief.

The application is accompanied with an affidavit sworn by the applicant which contain the grounds in support of the above sought prayers. The respondent has filed a counter affidavit disputing the applicant's application.

At the hearing of the application the applicant was represented by Mr. Julius Semali learned advocate while the respondent was represented by Mr. Elia Kiwia learned advocate. The learned counsel for the applicant prayed to submit in writing; a prayer which was not objected to by the respondent. The court therefore ordered parties to file their written submissions beginning with the applicant on 10/12/2020 followed by the respondent on 15/12/2020 and rejoinder if any on 18/12/2020. Submissions were timely filed and the effort is appreciated.

In his brief submission in support of the application the applicant's counsel prayed that the contents of the applicant's affidavit be adopted. In the applicant's affidavit, he stated in paragraph 4 that he was not satisfied with this court's decision in the appeal because the same is tainted with illegalities. Highlighting such illegalities, the learned counsel argued that the appellate court was supposed to order for retrial as it was directed in the case of **Edina Adam Kibona vs. Absolom Swebe (Sheli), Civil Appeal No. 286 of 2017 CAT at Mbeya**. The learned counsel then prayed that the applicant be granted leave to appeal to the court of appeal.

The counsel for the respondent on the other hand responded by referring to the general principle as provided for in the case of **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo, Civil Application No. 138 of**

2004 CAT at Dar es Salaam(*unreported*). Where in this case it was stated that leave to appeal to the Court of Appeal is only granted where the grounds of appeal raise issues of general importance or point of law or 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. The learned Counsel thus argued that the applicant's ground for appeal is not worth for Court of Appeal determination and if leave is granted the applicant has no chance of success.

As rightly submitted by the counsel for the respondent the general principle is that leave to appeal will be granted where the ground of appeal raises issues of general importance or a point of law or where the grounds show a *prima facie* or arguable appeal. In determining this application therefore, I will only examine whether the grounds for seeking leave fits the general principle.

In the instant case, the applicant's application simply prays for leave to appeal because the appellate court did not order retrial after allowing the appeal on grounds that the opinion of assessors was not read to parties and the fact that the trial tribunal did not record what transpired in the *locus in quo*.

I, however considered what was decided by this court in the decision sought to be challenged. It is clear in the judgement that the appeal was allowed on grounds of failure by the trial tribunal to properly analyze and evaluate the evidence on record, failure to record what transpired at the *locus in quo*

and that assessor's opinion was not read out in presence of parties. The appeal was allowed and trial tribunal's decision quashed and set aside. In my opinion, according to the decision in the case of **Edina Adam Kibona vs. Absolom Swebe(Sheli), Civil Appeal no. 286 of 2017, Court of Appeal of Tanzania at Mbeya(unreported)** non compliance to the provisions of Regulation 19(2) of the **Land Disputes Courts(The District Land and Housing Tribunal) Regulations, 2003** vitiates the proceedings, judgement and decree of the Tribunal. The order of the court quashing and setting aside the trial tribunal's decision had the effect of removing the proceedings, decisions and orders of the lower tribunal in the picture of events which had happened or existed. For that reason, any party may if so, wishes institute a fresh complaint at the tribunal subject to laws of limitation. In this case, if there was no clear statement in respect of proceedings, then the applicant may have applied for review instead of appealing to the court of appeal.

I have also considered the decision of the Court of Appeal in Edina's case as cited by the applicant. The court of appeal in this case ordered that if parties were still interested, then fresh hearing before another chairman and a set of new assessors be commenced. This means that an order for retrial was subject to interest of the parties.

The applicant had no other ground for seeking leave of this court to appeal to the court of appeal. The only mater advanced by the applicant does not

in my opinion involve point of law of general importance that requires the attention of the Court of Appeal.

I therefore find no merits in the applicant's application. In the result, the application is hereby dismissed with no order as to costs.

DATED and DELIVERED at Moshi this 12th day of February, 2021.




T. M. Mwenempazi
Judge