

**IN THE HIGH COURT OF TANZANIA  
(IN THE DISTRICT REGISTRY)  
AT MWANZA**

**MISC. LAND APPLICATION NO.112 OF 2020**

*(Arising from High Court Land Appeal No. 51 of 2019)*

**AFRILINE GENERAL TRANSPORT LIMITED ..... APPLICANT**

**VERSUS**

**REGISTRAR OF TITLES ..... RESPONDENT**

**RULING**

*Last order: 11.03.2021*

*Ruling date: 12.03.2021*

**A.Z.MGEYEKWA, J**

This application is brought under 47 (1) of the Land Disputes Courts Act, 216 [R.E 2019] and 45 (a) of the Tanzania Court of Appeal Rules of 2009. The applicant seeks leave to appeal to the Court of Appeal of Tanzania to impugn the decision of this Court in *Land Appeal No. 51 of 2019* delivered on 8<sup>th</sup> April, 2020. The application is supported by an affidavit deposed by Andrew Innocent Luhigo, learned counsel. On the

other hand, the respondent opposed the application by filing a counter affidavit deposed by Sabina Yongo, learned State Attorney.

Following the global outbreak of the Worldwide COVID - 19 pandemic (Corona virus), the hearing was conducted via audio teleconference, the applicant enjoyed the legal service of Mr. Luhigo, learned counsel and the respondent was represented by Sabina Yongo, learned State Attorney.

It was the learned counsel for the applicant who started to kick the ball rolling. He urged this court to adopt the applicant's affidavit and form part of his submission. Mr. Luhigo was brief and straight to the point. He stated that the applicant intends to challenge the decision of this court in Land Appeal No.51 of 2019. Mr. Luhigo went on to state that the applicant has raised arguable issue on fact and law in paragraph 7 of his affidavit. Mr. Luhigo fortified his submission by citing the case of **Bulnyahulu Gold Mine Ltd & 2 others v Petrolube (T) Ltd and Another**, Civil Application No. 364/16 of 2017.

On the strength of the above submission, Mr. Luhigo beckoned upon this court to grant their application to file an appeal to the Court of Appeal of Tanzania.

The learned counsel for the respondent strenuously resists the application through the counter affidavit as well as in the oral arguments

at the hearing before me. Ms. Sabina stated that there is no any law which states the conditions in grating leave although there are several authorities that have stipulated the conditions in the application for leave. To support her submission he cited the case of **Rev. Sadock Yakobo Mlongecha v Registered Trustees of PEFA Kigoma**, Civil Application No. 12 of 2016. She went on to state that one of the conditions is for the applicant to state whether there are an arguable ground and *prima facie* case. Ms. Sabina argued that the applicant on paragraph 7 of his affidavit has not mentioned any meriting ground.

The learned State Attorney did not end there, she argued that the law is clear that one cannot file an appeal which was not determined to its finality. She referred this court to section 5 (2) (d) of the Appellate Jurisdiction Act. Ms. Sabina added that the decision in Land Appeal No. 51 of 2019 did not determine the matter to its finality, instead, the applicant could challenge the decision of this court through other avenues but not appeal.

In conclusion, Ms. Sabina valiantly argued that the applicant has not stated any arguable ground to attract the attention of the Court of Appeal. She urged this court to dismiss the application with costs.

Rejoining, Mr. Luhigo reiterated his submission in chief and added there are arguable grounds to which attract the attention of the Court of Appeal



of Tanzania. Mr. Luhigo spiritedly argued that the applicant filed an appeal and not an application in this court, the matter was determined to its finality and this court dismissed the appeal.

On the strength of the above submission, Mr. Luhingo beckoned upon this court to grant leave to the applicant to file an appeal before the Court of Appeal of Tanzania.

Having stated the above, I should now be in a position to address the relevant issue in the application which is whether the applicant should be granted leave to appeal to the Court of Appeal of Tanzania. It is important to underline here that 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 materials before the court. It is when the grounds of appeal raise an issue of general importance or a new point of law or where the grounds show a prima facie or arguable appeal. In the case of **Gaudensia Mzungu v IDM Mzumbe**, Civil Application No. 94 of 1994 (unreported), the Court of Appeal of Tanzania held that:-

*“Leave will be granted if, prima facie there are grounds meriting the attention and decision of the Court of Appeal.”*

Equally, in the case of **British Broadcasting Corporation** (supra) the Court of Appeal of Tanzania at Dar es Salaam (unreported) held that:-

*“ 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... “*

On the contrary, a court cannot grant leave where the grounds of appeal are frivolous, vexatious or useless, or hypothetical. As was lucidly stated by this Court of Appeal of Tanzania in Civil Reference No. 19 of 1997, **(i) Harban Haji Mosi (ii) Shauri Haji Mosi v. (i) Omar Hilal Seif (ii) Seif Omar** (unreported) that:-

*"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."*

The purpose of the provision is to spare the Court the menace of unmeriting matters and to enable it to give adequate attention to cases of true public importance. Opposing the application, Ms. Sabina argued that the applicant has not raised any arguable grounds or prima facie. She referred this court to paragraph 7 of the applicant's affidavit. In her view, the applicant has not mentioned any meriting ground which attracts the



attention of the Court of Appeal of Tanzania. These issues can be gleaned from paragraph 7 of the applicant's affidavit, I find that the applicant has raised serious issues of law and fact worth consideration by the Court of Appeal of Tanzania. The Court of Appeal of Tanzania in the case of **Bulnyahulu Gold Mine Ltd & 2 others v Petrolube (T) Ltd and Another** (supra), the Court of Appeal held that:-

*" The above said, we are satisfied that the grounds raised by the applicants raise **serious issues of law and facts** worth consideration by the Court." [Emphasis added].*

Guided by the above provision of law, without expressing any opinion, I am satisfied that the ground raised is embraced in conditions set in the cases of **Bulnyahulu Gold Mine Ltd & 2 others v Petrolube (T) Ltd and Another** (supra). The learned Solicitor contended that the matter at this court was not determined to its finality while the learned counsel for the applicant insisted that the matter was a detriment to its finality and as a result, this court dismissed the application. I am in accord with the learned counsel for the applicant that the matter was determined to its finality therefore the same can be challenged at the Court of Appeal of Tanzania.

In my considered view, without analyzing the issues, I think these are points of law that can move this court to grant the applicant's application, once an appeal is eventually lodged the Court of Appeal of Tanzania will

have to determine the two raised points of law. I do not think the grounds raised in by the applicant are solemn enough to be determined by the Court of Appeal of Tanzania. I, therefore, proceed to grant leave to appeal to the Court of Appeal of Tanzania as prayed in the chamber summons.

In the upshot, the application succeeds leave to appeal to the Court of Appeal of Tanzania is granted.

Order accordingly.

DATED at Mwanza this 12<sup>th</sup> March, 2021.



  
A.Z MGEYEKWA

**JUDGE**

12.03.2021

Ruling delivered on 12<sup>th</sup> March, 2021 via audio teleconference whereas Mr. Luhigo, learned counsel and Ms. Yongo, learned State Attorney were remotely present.

  
A.Z MGEYEKWA

**JUDGE**

12.03.2021