

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO. 53 OF 2020

(C/F Land Appeal No. 23 of 2019 in the High Court at Arusha, Original, Application No. 92 of 2019 in the District Land and Housing Tribunal for Arusha)

ANDREW P. TANGO.....APPLICANT

VERSUS

HUSSEIN IDD KANYINYI.....RESPONDENT

RULING

09/02/2021 & 16/04/2021

GWAE, J

Before this court is an application filed by the applicant, Andrew P. Tango above preferred under section 47 (2) of the Land Disputes Court Cap 216 R.E 2019 and section 5 (1) (c) of the Appellate Jurisdiction Act Cap 141 R.E 2019 and Rule 45 (a) of the Tanzania Court of Appeal Rules, 2009 as amended by GN No. 362 of 2017 for an order granting of leave to appeal to the Court of Appeal against the decision in Land Appeal No. 23 of 2019 where the appeal was allowed with costs. The application is supported by the affidavit of the applicant and strongly opposed by a counter affidavit of the respondent.

A memorandum of appeal is also attached to the applicant's application and for the purposes of this application I find it apposite to list them hereunder;

1. That, the learned judge erred in law and in fact in not finding that the trial tribunal wrongly refused to admit sale agreement tendered by the appellant during trial.
2. That, the learned judge erred in law and in fact in holding it was wrong for the trial tribunal to declare the respondent lawful owner of the suit land based on the testimony without any written agreement.
3. That, the learned judge erred in law and in fact in holding that the suit land was not sold to the appellant

The applicant and respondent enjoined the legal services from **John F. Materu** and **Mrs. Kimale**, learned counsel respectively. With the leave of the court, the matter was disposed of by way of written submissions, which were filed accordingly.

Supporting this application Mr. Materu argued that in the applicant's intended appeal he shall contend that the applicant's sale agreement was wrongly rejected by the trial Tribunal on the ground that no stamp duty was paid. According to him the learned judge ought to have returned the case to the trial court for it to receive the said sale agreement after payment of the stamp duty.

Mrs. Kimale on the other hand disputed the application and stated that after going through the applicant's submission there are no points of law that the Court of Appeal is invited to determine.

In rejoinder the reiterated his submission in chief and further maintained that the intended appeal has overwhelming chances of succeeding.

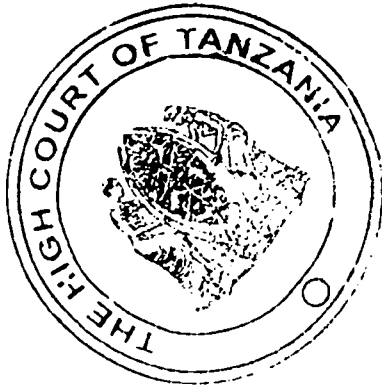
From the above cited provision of the law in the chamber summons it appears that a party who is aggrieved by a decision of the High Court exercising its 1st appellate or revisional jurisdiction must, before appealing to the Court of Appeal of Tanzania, seek leave in the High Court first. However, as contended by the counsel for the respondent the grant is not automatic. It is therefore obvious that there must be some criteria to be taken into consideration by the High Court before granting as it was correctly held in the case of **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo**, Civil Application No. 138 of 2004, (Unreported) where the court stated that;

"As a matter of general principle, leave to appeal will be granted where the grounds of appeal raise a general importance or a novel point of law or where the grounds show a prima facie or arguable appeal"

Reverting back to the proposed memorandum of appeal, submission by the parties together with the impugned judgment, I am satisfied that this application for leave is not deniable since it is plainly clear that there is at least arguable appeal that requires serious attention of the Court of Appeal particularly whether, this court was justified to have returned the case to the trial tribunal for it to receive the said sale agreement after payment of the stamp duty.

Having found as explained hereinafter, this application is granted. The applicant is granted leave to appeal to the Court of Appeal of Tanzania. Costs of this appeal shall abide an outcome of the intended appeal.

It is so ordered.




M.R. GWAE

JUDGE

16/04/2021