

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MTWARA)
AT MTWARA**

MISC. LAND APPLICATION NO 1 OF 2020

*(Arising from the District Land and Housing Tribunal of Mtwara at Mtwara
in Land Case Appeal No. 107 of 2017)*

RASHID R. MNIPOSA.....APPLICANT

VERSUS

LYEHA JAMALI MSOI RESPONDENT

RULING

Final submission date on: 27/8/2021

Ruling date on: 16/4/2021

NGWEMBE, J:

The applicant is in this court, seeking leave to appeal to the Court of Appeal of Tanzania against the judgment and decree entered by this court in Land Case Appeal No. 6 of 2018.

In moving this court; the applicant has cited section 5 (1) (c) of The Appellate Jurisdiction Act [Cap 141 R.E 2002] and Rule 45 (a) and (b) of Tanzania Court of Appeal Rules 2009 as enabling provisions for the application. The chamber summons is supported by an affidavit sworn by the applicant, Rashid R. Mniposa.

This application was not opposed by the respondent, for according to the evidence adduced by Village Executive Officer, the respondent refused to accept summons to file response to the application. Consequently, the application proceeded unopposed.

In the written submission of the applicant, he strongly argued that, he intends to appeal to the Court of Appeal of Tanzania against the decision of this court in Land Case No. 6 of 2018 delivered on 19th December, 2019.

That all initial stages have been completed, but due to the requirement of law on cases originates from the Ward Tribunal, before going to the Court of Appeal, the High Court is obliged to determine whether there is a point of law worth attention of the Court of Appeal.

In compliance thereof, the legal issue for consideration by the Court of Appeal is *whether the farm measuring 20 acres valued about 20,000,000/= can be determined by a Ward Tribunal*. This is a point worth consideration by the Court of Appeal, though, pecuniary jurisdiction is always statutory.

Granting or otherwise of leave to appeal to the Court of Appeal, likewise, is statutory as rightly cited by the applicant in Section 5 (1) (c) of The Appellate Jurisdiction Act [Cap 141 R.E 2002], read together with Rule 45 (a) and (b) of the Tanzania Court of Appeal Rules 2009. These provisions confer powers to this court to grant leave to appeal to the Court of Appeal of Tanzania. For easy reference the section is quoted;



Section 5 (1) in civil proceedings, except where any other written law for the time being in force provides otherwise, and appeal shall lie to the court of Appeal.

(c) With the leave of the high court or of the court of Appeal, against every other decree, order, judgment, decision or finding of the High Court.

Rule 45 in civil matters,

(a) Where an appeal lies with the leave of the High Court, application for leave may be made informally, when the decision against which it is desired to appeal is given, or by chamber summons according to the practice of the High Court, within fourteen days of the decision.

(b) Where an appeal lies with the leave of the court, application for leave shall be made in the manner prescribed in rules 49 and 50 and within fourteen days of the decision against which it is desired to appeal has been made to the High Court and refused, within fourteen days of that refusal.

In similar vein, Section 47 (1) of The Land Disputes Court Act. Cap 216, provide jurisdiction to this Court to grant leave to a person intending to appeal to the Court of Appeal against the decision of the High Court arising from land cases. For ease of reference the section is quoted hereunder:-

*"47 (1) Any person who is aggrieved by the decision of the High Court on exercise of its original, revisional or **appellate jurisdiction**, may with the leave of the High Court appeal to the court of Appeal in accordance with the Appellate Jurisdiction Act, 1979".*



It is clear from the above quoted provisions of law that, this court is vested with exclusive jurisdiction to entertain an application for leave to appeal to the Court of Appeal.

Since the intended appeal is related to a point of law worth consideration by the Court of Appeal, I find no reason to refuse it. I accordingly grant leave to the applicant to appeal to the Court of Appeal.

Order accordingly.

Dated at Mtwara in chambers this 16 day of April, 2021



P.J. NGWEMBE

JUDGE

16/4/2021

Court: Ruling delivered at Mtwara in chambers on this 16 day of April, 2021 in the presence of the Applicant and in the absence of the Respondent.



P.J. NGWEMBE

JUDGE

16/4/2021