

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

MISC LAND APPLICATION NO 54 OF 2020

(Arising from the Judgment and Decree of the High Court of Tanzania at Shinyanga in Land Appeal Case No.33 of 2015 originated from Land Application No. 46 of 2013 of the Shinyanga District Land and Housing Tribunal dated 30th March, 2015)

JAMES ANTHONY IFADA.....APPLICANT

VERSUS

HAMIS ALAWI.....RESPONDENT

RULING

21st and 30th April 2021

MKWIZU J:

This is an application for leave to file appeal to the Court of appeal against the Judgment of the High Court of Tanzania at Shinyanga in Land Appeal No. 33 of 2015. It is made under the provisions of section 47(2) of the Courts (Land Disputes Settlements) Act Cap 216 R.E 2019) and supported by applicant's affidavit sworn on 26th August, 2020

When the application came for hearing on 21st April, 2021 both the applicant and the respondent appeared in person/unpresented. The applicant's submissions were very brief. He prayed for the court to grant him leave to appeal to Court of Appeal. He adopted his affidavit to form part of his submission and prayed for his application to be allowed with costs.

In response, the respondent had no objection to the application. He also prayed the application to be allowed.

I have considered the application. Applicant is intending to appeal to the Court of Appeal against the decision of this court in Land Appeal No.33 of 2015. This is a legal requirement under section **47 (2) of the Land Disputes Courts Act (Cap 216 R:E 2019)** that a party *aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction* should obtain leave first. The section provides:

(2) A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may, with leave of the High Court or Court of Appeal, appeal to the Court of Appeal.

In **Harban Haji Mosi and another Vs. Omari Hilal Seif and another**, Civil Reference No. 19 of 1997 CAT it was stated that;

" Leave is grantable where the proposed appeal stands reasonable chances of success or where but not necessarily the proceeding as whole reveals such disturbing features as require the guidance of the court of Appeal. The purpose of the provision is therefore to spare the court the spectre of unmeriting matter and enable it to give adequate attention to cases of true public importance."

The grounds for the appeal are as enumerated in paragraphs 5, 6,7,8 and 9 of the affidavit which can safely be summarized thus:

- 5 Whether Hamis Alawi as an administrator of estate of the Late Alawi Iddi Makira had locus stand to appear and prosecute the dispute in relation to the suit land belonging to Kasesa Alawi - the deceased*
- 6 Whether it was proper for both the Shinyanga District and Housing tribunal and the High Court to treat this case as a land dispute and not Estate Administration case because the true owner of the land is one Kasesa Alawi.*

- 7 Whether it was proper for the District Land and Housing Tribunal and the High Court to allow Hamis Alawi to appear in this case regarding property of a deceased person, while is not the administrator of estate of the said Kasesa.*
- 8 Whether the High Court was proper in upholding the declaration that applicant's late father is the lawful owner of the suit plot.*
- 9 Whether it was proper for the court to invalidate the transfer merely because of the speedy transfer of the disputed land from the estate of Yusuf Elias to the applicant*

I have traversed through the decision intended to be appealed against, undeniably the raised issues did feature. Respondent was mentioned as an administrator of the estate of his late father. The trial tribunal as well as this court questioned on the speedy transfers between the applicant and the seller's wife. Again, it is on the records that the respondent had no letters of administration in respect of one Kisesa's estate. On how these issues affects the rights of the parties, it is an issue of the Court of Appeal to decide. Going further would amount to determining the intended appeal on merit which is not the ambit of this court at this stage.

Given that this application was not contested, I find the application meritorious. Leave to appeal to the court of appeal is granted with no order as to costs.

It is so ordered.

DATED at SHINYANGA this 30th day of APRIL, 2021.




E.Y. MKWIZU
JUDGE
30/4/2021