

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

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

MISC. LAND APPLICATION NO. 01 OF 2021

(From the Decision of the High Court of Tanzania at Mbeya in Land Appeal No. 06 of 2020. Originating from the District Land and Housing Tribunal for Mbeya at Mbeya in Application No. 122 of 2019.)

RAYMOND GABRIEL MPANGWE.....1ST APPLICANT
MOCKLY GABRIEL MPANGWE.....2ND APPLICANT

VERSUS

GUSTAVUS NSILO SWAI.....RESPONDENT

RULING

Date of Last Order: 19/05/2021
Date of Ruling : 22/07/2021

MONGELLA, J.

The applicant is seeking for leave to appeal to the Court of Appeal against a decision of this court (Mambi, J.) rendered in Land Appeal No. 06 of 2020. In the said decision, the appellants had appealed against the decision of the District Land and Housing Tribunal (the Tribunal) rendered in Application No. 122 of 2019. The High Court ruled in favour of the respondent something which annoyed the appellants, hence the application at hand. The application is brought under section 47 (2) of the Land Disputes Courts Act, Cap 216 R.E. 2019 and section 5 (1) (c) of the


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Appellate Jurisdiction Act, Cap 141 R.E. 2019. It was argued by written submissions.

The applicants were represented by Mr. Baraka Chipamba, learned advocate. In his submission, Mr. Chipamba argued that there are disturbing issues necessitating the intervention of the Court of Appeal (CAT). He stated the issue to be determined by the CAT concerns the decision of this Court which referred to the Tribunal record and exhibits which were not before the Court. He argued that the High Court judge purported to make reference to the Tribunal record in a judgment delivered on 11th December 2020 while the Tribunal record was ready to be dispatched to the High Court on 1st March 2021.

Mr. Chipamba further argued that the exhibits that the Hon. Judge made reference to do not support the findings he came up with. Thus, if the Hon. Judge had the Tribunal record before him and gone through it thoroughly he would not have reached the decision he reached.

He also contended that the Hon. Judge *suo motu* raised new issues regarding disclosure of cause of action, the appellants' locus standi to the suit, adverse possession without according parties their right to be heard by addressing the court on the issues.

In consideration of what transpired, Mr. Chipamba contended that there are disturbing issues to be determined by the CAT. He listed the issues to be:



1. Whether or not the High Court Judge was correct to dismiss Land Appeal No. 06 of 2020 without being availed with the trial Tribunal record for determination of the appeal.
2. Whether the High Court Judge was correct to dismiss Land Appeal No. 06 of 2020 on the ground that the respondent's witnesses and exhibit P3 revealed that the respondent was rightly allocated the suit land by Shoga village as the allocating authority.
3. Whether the High Court Judge was correct to dismiss Land Appeal No. 06 of 2020 on the ground that the evidence from the trial Tribunal is clear that the respondent had been using the suit land from 2007 to 2019, hence acquired it by adverse possession.
4. Whether the High Court Judge was correct to dismiss Land Appeal No. 06 of 2020 on the ground that the applicants failed to prove ownership of the suit land by not showing any document or evidence to prove ownership of the suit land.
5. Whether the High Court Judge was correct to dismiss Land Appeal No. 06 of 2020 on the ground that the appellants failed to discharge their burden of proof by not disclosing the cause of action.
6. Whether the High Court Judge was correct to dismiss Land Appeal No. 06 of 2020 on new grounds raised *suo motu* by the court without according parties the right to address the court on the said issues.



7. Whether the High Court Judge was correct to dismiss Land Appeal No. 06 of 2020 without discussing an important issue as to whether there was double allocation, being the main issue in the Tribunal decision.

On the other hand, the respondent was represented by Ms. Caroline Joseph Mseja, learned advocate. Ms. Mseja opposed the application on the main ground that the applicants have based their application on points of facts. Citing the case of **National Bank of Tanzania Commerce (sic) v. Masha Uledi (Life Business Centre)**, Civil Application No. 410 of 2007 (CAT at Mtwara, unreported), she contended that for leave to appeal to the CAT to be granted the applicant must demonstrate a point of law to be determined by the CAT. She added that there is no any prima facie ground meriting an appeal on points raised by the applicants.

Regarding the allegation that the Hon. Judge determined the matter without having the Tribunal record to go through, Ms. Mseja contended that it is all false. She submitted that the Hon. Judge called for records as seen on the proceedings. However, since the matter got adjourned for quite a long time following the Tribunal running short of typists, the Hon. Judge ordered the record to be supplied to him in its original form so as the case is finalised at the High Court. On this submission she disputed the appellant's claim and prayed for the court not to consider the allegation.

Ms. Mseja made further submission on how the respondent proved his case in the Tribunal and how the Tribunal and the High Court considered the evidence on record including exhibit P3, which is part of the

applicants' points of contention. I find no relevance of reproducing the whole submission as it shall be as good as entertaining the appeal. With regard to the applicant's contention that the Hon. Judge introduced new issues and deliberated on them without giving the parties the right to be heard, Ms. Mseja made no reply. To this point therefore, I find it appropriate to move into deliberating on the merit of the application.

I first wish to start with Ms. Mseja's argument that for leave to appeal to be granted the applicant must show the point of law to be determined by the CAT. I in fact do not subscribe to her line of argument. The law is settled to the effect that for matters emanating from district court, RMs courts or district land and housing tribunals, the applicant need not show a point of law to be determined by the CAT. The applicant is rather required to demonstrate existence of triable issues or disturbing features needing the intervention of the CAT. The same can therefore involve matters of fact as well. The application was made under section 47 (2) of the Land Disputes Courts Act, Cap 216 R.E. 2019, which states:

"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."

Considering the above provision, it is apparent that it is not mandatory for point of law to be demonstrated or raised for the leave to be granted. See also: **Harban Haji Mosi & Another v. Omari Hilal Seif & Another** [2001] TLR 409; and **Faustina Kanyasa v. Neva Kanyasa and Richard Kanyasa**, Misc. Land Application No. 108 of 2016 (HC at Mbeya, unreported).

In this application, the applicant claimed that the Hon. Judge determined the appeal without having the trial Tribunal record before him thus reaching at an erroneous decision. This allegation was disputed by Ms. Mseja who submitted that after the record took too long to reach the High Court despite being called for several occasions, the Hon. Judge ordered for the original handwritten record to be availed to him for speedy disposition of the matter. I have gone through the proceedings of the court and I do not find the contention by Ms. Mseja being supported by the record.

Considering the arguments by the applicant I find that the root of all the contentions advanced therein starts from absence of the Tribunal record before the High Court. The applicants' main claim is that if the said record was brought and considered by the Hon. Judge he would have arrived at a different decision. They claim that the Hon. Judge missed the opportunity to scrutinize the documentary and oral evidence provided by the parties in the Tribunal as he did not have the record with him.

On the same line, they as well claim that the Hon. Judge deliberated on new issues raised *suo motu* by the Court without according the parties their right to be heard. This included the acquisition of the land in dispute by the respondent by adverse possession, disclosure of cause of action, and the appellants' locus standi to the suit.

In consideration of the applicants' arguments and the High Court record, I find that the applicants' application has merit. I agree with the appellants



that there are disturbing features needing intervention by the CAT. The leave to appeal to the Court of Appeal is therefore granted.

Dated at Mbeya on this 22nd day of July 2021.


L. M. MONGELLA

JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 22nd day of July 2021 in the presence of Mr. Kelvin Kuboja Gamba, learned advocate, holding brief for Mr. Baraka Chipamba, advocate for the applicants.




L. M. MONGELLA
JUDGE
