

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC LAND APPLICATION NO. 46 OF 2021

(Arising from Judgment of the High court of Tanzania at Mwanza (Hon. Rumanyika, J) in Land Appeal No. 54 of 2020 dated 23rd day of April, 2021, Originating from the decision of District Land and Housing Tribunal for Mwanza at Mwanza, in Land Application No. 309/2019 Hon. Mayeye CP)

MARY THADEO APPLICANT

VERSUS

JAMES KIZITO JOHN 1ST RESPONDENT

DAVID CHARLES MARWA 2ND RESPONDENT

RULING

28/07/2021 & 19/08/2021

W. R. MASHAURI, J;

This is an application for leave to appeal to the Court of Appeal against the decision of the High court of Tanzania Mwanza at Mwanza in Land Appeal No. 54 of 2020 Hon. Rumanyika, J.

It has been filed in this court under section 5(I) (c) of the Appellate Jurisdiction Act Cap. 141 R.E. 2019. The orders sought by the appellant include: -

1. That, this court be pleased to grant leave to enable the applicant to appeal against the judgment of the High court of Tanzania at Mwanza (Hon. Rumanyika, J.) dated 23rd day of April, 2021 in Land Appeal No. 54 of 23rd day of April, year 2021.
2. Costs of this application, and
3. Any other reliefs this court may deem fit and just to grant.

The application is supported by an affidavit deposed by Mr. Mathias Musa Mashauri learned counsel for the applicant, Mary Thadeo.

Mr. Mwihibi learned counsel appeared for the 2nd respondent who sometimes was referring the 2nd respondent as 1st respondent.

When the matter was called in court for hearing on 28/07/2021 Mr. Mathias Musa Mashauri learned counsel for the applicant prayed the court to proceed ex parte against the 2nd respondent on a reason that he was even in the Trial Tribunal not appearing in court the result of which the matter was tried ex parte against him.

The learned counsel for the applicant further notified that, in his case brief, there is copy of death certificate attached to the chamber summons to the effect that, the 2nd respondent is dead, that's why even in the trial

Tribunal, the matter was heard *ex parte* against him. This allegation on the 2nd respondent's death was not contested by his advocate Mr. Mwinobi and when I quickly gone through the record, I saw loose at center of the record an affidavit of process server Lebeka Alibinus swearing that one David Charles Marwa was not served because he is dead. I also found from the record, a "*kibali cha mazishi*" No. 1233602 showing that the 1st respondent James Kizito John died at Sekou-Toure hospital on 10/04/2020, I did not order for retrial of the matter so as to join the administrator of the deceased because this was not an issue from the inception of the case in the Trial Tribunal. I therefore granted the prayer by the parties to proceed with this appeal *ex parte* against the 1st respondent so as to avoid an unnecessary delay of the matter. Hence hearing followed.

On his part, Mr. Mathias Mussa Mashauri learned counsel for the applicant, upon prayed the court to adopt his sworn affidavit as part of his submission submitted that, the applicant has opted to appeal to the Court of Appeal because he was not satisfied with the decision of the High court of Tanzania at Mwanza in Land Appeal No. 54 of 2020 delivered on 23/04/2021 Hon. Rumanyika, J. That, the applicant has good argument to be forwarded to the

Court of Appeal of Tanzania for determination. That, other contentious arguments of legal issues to be taken to the Court of Appeal are: -

1. Whether it was correct for the 2nd respondent to lock the appellant's room he had rented for business.
2. Whether it was correct for the court to rule that the applicant has no legal lease agreement.

That, in Land Appeal No. 54 of 2020, the Hon. judge misdirected himself by holding that, the applicant was not legal tenant of the respondent whereby in fact the applicant was legally rented the premises and his lease contract was maturely terminated.

That, together with other contentious issues to be argued before the Court of Appeal, Mr. Mathias Musa Mashauri prayed the court to allow the applicant's application with costs.

In reply, Mr. Mwihibi counsel for the 2nd respondent replied by saying that, upon heard the learned counsel for the applicant's submission in support of the application he did not hear any contentious matter which had arose in the trial court to be taken to the Court of Appeal for determination, despite of being aware that, an appeal to the upper court by a person not

satisfied with the decision of a lower court is a right but an appeal to the Court of Appeal cannot be lodged in the Court of Appeal merely by the appellant's allegation that, he was not satisfied by the decision of the High court. It is however a matter of general principle that, 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.

However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted. This was held by the Court of Appeal in Tanzania in the case of **Harban Haji Mosi & Shauri Haji Mosi v/s. Omar Hilali SeifSeif Omar** Civil Reference No. 19 of 1997 (unreported) in which was also held by the Court of Appeal 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."

Speaking for my sake, the issues raised by the appellant cannot be ruled as frivolous, vexatious or unless. I think there is need for the Court of Appeal to resolve the rival contentions of the parties and have an authoritative interpretation by the Court of Appeal on the disputed provisions

of the contract Act as well as the Rent Restriction Act 1962 as amended by the Rent Restriction Act 1984.

Looking at the events, I accordingly allow leave to appeal to the Court of appeal as sought. No order as to costs is made.




W. R. MASHAURI
JUDGE
19/08/2021

Date: 19/08/2021

Coram: Hon. W. R. Mashauri, J

Applicant: Mr. Mathias Mashauri for applicant.

Respondent: Mr. Charles Mwehozi for 2nd respondent

1st Respondent, absent

Court: Rulign delivered in court in the presence of Mr. Mathias Mashauri, advocate for the applicant and Mr. Mwehozi, advocate for 2nd respondent and in absence of 1st respondent this 19/8/2021. Right of appeal explained.




W. R. MASHAURI

JUDGE

19/08/2021