

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA
MISC. LAND APPLICATION NO.22 OF 2021

*(Arising from the from High Court Land Appeal No. 99 of 2019, Land Application
No.128 of 2018 from Singida District Land and Housing Tribunal)*

MARTIN ITAMBU

(As an Administrator of the Estate of

YUSTINA ITAMBU NJIKU)..... APPLICANT

VERSUS

SHABANI DEDU RESPONDENT

RULING

Date of last Order: 12.08.2021

Date of Ruling: 25.08.20121

Dr. A.J. Mambi, J.

This Ruling emanates from the application filled by the applicant for leave to appeal to the Court of Appeal. The applicant filed a chamber summons application under Section 47(2) of the Land Disputes Courts Act, Cap. 216 [R. E. 2019] and Rule 45 (a) of the Tanzania Court of Appeal Rules, 2009. The applicant prays to this

court to grant leave to enable him to appeal to the Court of Appeal against the Ruling made by this Court. During hearing, the applicant appeared under the services of Mr Cheapson Luponel Kidumage while the respondent appeared unrepresented.

The applicant through his learned Counsel briefly submitted he pray to adopt his affidavit which contains point of law for his application,

In response, the respondent counsel had no objection on the application apart from just saying that the respondent has no any objection on this application.

I have keenly perused the documents and considered brief the submissions made by both parties including an affidavit filed by the applicant to find out whether this court has been properly moved and whether this application has merit or not. The main issues in my considered view is whether the applicant has advanced clear points of law and grounds to warrant this court to grant leave to appeal to the court of Appeal. In other words this court needs to determine as to whether there are points of law that has been raised by the applicant to enable this court to grant a certificate for him to appeal to the court of appeal. It is the settled position of the law that for the court to consider an application for leave to appeal to the court of appeal, there must be point/s of law to be determined. It is also trait law that grant of leave or certificate to appeal to the Court of Appeal is a discretionary to the court.

The law on this point is very clear on what should court consider before granting leave for an application for leave or certificate to

appeal to the Court of Appeal of Tanzania against the judgment and Orders given by this Court as I alluded above. It is clear that the decision which is intended to be appealed was made by this court in the exercise of its appellate jurisdiction. This means that the applicant was right to file an application under the relevant provisions of the law. However, before the High court grant certificate to appeal to the court of law the applicant must clearly show the points of laws that were not determined by the Judge who made the decision against him.

The requirement for showing point/points of law for any party seeking for leave to High Court to appeal to court of Appeal is provided under the Appellate Jurisdiction Act, Cap 141 [R.E.2019]. This is under the section 5 (2) (c) of the Appellate Jurisdiction Act, Cap 141 [R.E.2002] which provides that:

*“no appeal shall lie against any decision or order of the High Court in any proceedings unless the High Court certifies that a **point of law** is involved in the decision or order”*

This was also underscored by the Court of Appeal in **NELI MANASE FOYA VS DAMIAN MLINGA, MISC.APPEAL NO.19 of 1999** at pages 2 and 3.

The question is, did the applicant indicated any point of law as required by the law?. I have perused the affidavit by the applicant and observed that he has points of law that needs to be determined by the Court of appeal. Indeed even the respondent had no objection on this application. This court has in numerous decisions held that certificate or leave to appeal to the Court of Appeal can

only be granted where the applicant has clearly pointed out the points of law in his affidavit. I am also aware that leave to appeal is not automatic rather it is discretionary. Looking at the affidavit by the applicant, I find that the applicant has established that there are points of law that need to be determined by the court of appeal.

Indeed the provisions of the law are very clear on what should court consider before giving certificate for an application for leave to appeal to the Court of Appeal of Tanzania against the judgment and Orders given by this Court. This is founded under section 5 (2) (c) of the Appellate Jurisdiction Act, Cap 141 [R.E.2019] as I observed earlier. Under this provision of the law, the High Court is required to certify that point/s of law are involve before an appeal could be entertained by the Court of Appeal.

My perusal from the documents has revealed that there legal points and issues that need to be determined by the Court Appeal. In light of what I have observed and reasoned, I find it proper the applicant to be granted leave to appeal to the Court of Appeal as prayed. In the result, I grant the application as prayed. The application shall file his appeal to the Court of Appeal within the time prescribed by the law from this date. I make no orders as to costs.

It is so order.



A handwritten signature in blue ink, appearing to be "Dr. A. J. Mambi", written over a horizontal line.

Dr. A. J. MAMBI

JUDGE

25/08/2021

Ruling delivered this 18th day of August 2021 in presence of the applicant and Absence of the respondent.




Dr. A. J. MAMBI

JUDGE

25/08/2021

Right of appeal explained.




Dr. A. J. MAMBI

JUDGE

25/08/2021