

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA

MISC.LAND APPLICATION NO.92 OF 2019

*(Arising from the High Court of Tanzania at Dodoma in Land Appeal
No.18/2019 Original Land Application No. 10/2014 in the District
Land and Housing Tribunal for Singia at Singida)*

CHAUSIKU SHABANI RYAKIAPPLICANT

VERSUS

IHANJA VILLAGE COUNCIL..... RESPONDENT

RULING

Date of Ruling: 17.09.2021

A. MAMBI, J.

The applicant has filed his application for the leave of this court to appeal to the Court of Appeal. The applicant has filed this application following his dissatisfaction with the decision of this court. The applicant filed a chamber application under section 47(1) and (2) of the said Disputes Courts Act, Cap 126 R.E 2002, section 5 (1) (c) of the Appellate Jurisdiction Act, Cap 141 [R.E.2019] and

Rule 45(a) of the Tanzania Court of Appeal Rules, GN. No. 368 of 2009.

The applicant prays to this court to grant leave to enable him to appeal to the Court of Appeal against the Judgment made by this Court under Hon.Judge Mansoor.

During hearing the applicant was represented by the learned Counsel Mr Komba while the respondent was represented by the learned Counsel Ms Coku Selemani.

The applicant Counsel in his submission submitted that the applicant has been aggrieved by the decision made by this Court under Hon.Judge Mansoor and intends to appeal to the Court of Appeal. The learned Counsel argued that the applicant has two points of law under the affidavit that need to be determined by the court of Appeal.

In response, the Respondent through the learned Counsel Ms Coku had nothing to submit more apart from just saying no objection..

I have keenly perused the documents and considered the submissions made by both parties in line with the documents filed and the ruling made by this Court. I am aware that the respondent Counsel did not object the application but that does not automatically move the court to grant application. The court has to consider and establish if there are points of law that need to be determined by the Court of Appeal. In my considered view, there is one main issue that need to be addressed. The main issue is

whether the applicant has indicated the points of the law that need to be discussed by the court of Appeal if this court grants leave.

It is clear that the Judgment which is intended to be appealed was made by this court as second appellate Court. However, before the High court grant leave 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 question is; did the application indicate clear points of law under her affidavit and chamber summons?.

The requirement for showing point/points of law for any party seeking for leave to High Court to appeal to the 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 under Head (c) of Part III of the Magistrates' Courts Act 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 DAMLAN 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 ruling made by the Judge and satisfy myself that the judge was right in her decision and there is no any point of law to be determined by the Court of Appeal.

This court has in numerous decisions held that certificate or leave to appeal to the Court of Appeal can only be granted where the proposed appeal stands reasonable chances of success and the applicant has clearly pointed out the points of law in his affidavit. I am also aware that leave or certificate on point of law to appeal to the Court of Appeal is not automatic rather it is discretionary of this Court. Looking at the affidavit by the applicant, I find that the applicant has not established that there are points of law that need to be determined by the court of appeal. The so called points of law faound under the applicant chamber summons in my view can be said as point of laws apart from facts that were clearly clarified and determined by the honourbale judge at pages 4,5,6 and 7of the judgment.

In this regard, there is nothing can be regared as points of law by this court to enable the applicant to appeal to the court of appeal apart from just wasting the time of the court.

Indeed the provisons of the law are very clear on what should court consider before granting leave for to appeal to the Court of Appeal of Tanzania against the judgment and Orders given by this Court. It is trite law that , the High Court is required to consider application for leave to appeal to the court of appeal where the applicant indicates that there is/are point/s of law that are involved before an appeal could be entertained by the Court of Appeal. I have perused the judgment of this Court and the application filled by the applicant, but I don't see any point of law to justify me and this

court to grant leave for the applicant to appeal to the Court of Appeal as there is no any point of law indicated by the applicant. The applicant has not indicated any point of law and sufficient reasons other than wasting time. It should also be noted that this matter which originated from Land Application No.10 of 2014 (DLHT) and Appeal No. 18 of 2019 (High Court) has taken a long time at the detriment of the beneficiaries of health services that is the public without any justification. My thorough perusal has revealed that the applicant has not raised any point of law related to what he has stated in his affidavit. As alluded above that leave to appeal to the Court of Appeal is not automatic, one must clearly show the points of law to be determined and must adduce clear grounds of the intended appeal.

From what I have observed, I am constrained to hold that the application before this court is devoid of merit. I am of the consider view that entertaining this kind of application is wastage of the time of this court and both parties. In the circumstances, I am satisfied there is nothing can be regarded as point of law to justify the intended appeal to the court of Appeal. In the result, I dismiss the application in its entirety. I make no orders as to costs. It is so ordered.

A.J. MAMBI

JUDGE

17.09. 2021

Ruling delivered in Chambers this 17th day of September, 2021 in presence of both parties.

A. J. MAMBI

JUDGE

17.09. 2021

Right of appeal explained.

A. J. MAMBI

JUDGE

17.09. 2021