

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC. LAND APPLICATION NO. 88 OF 2020

(C/F High Court of Tanzania at Arusha, land Appeal No. 17 of 2019 originating from District Land and Housing Tribunal of Arusha at Arusha, Application No. 59 of 2011)

ELIBARIKI JACOB.....APPLICANT

VERSUS

BABU LIBILIBI.....1ST RESPONDENT

MARTIN WARAE ANNEY.....2ND RESPONDENT

RULING

10/8/2021 & 17/9/2021

ROBERT, J:-

This is a ruling on an application filed by the Applicant, **ELIBARIKI JACOB**, against the two Respondents herein. The Applicant sought leave of this court to appeal to the Court of Appeal of Tanzania against the Judgment of this court dated 26th October, 2020 in Land Appeal No. 17 of 2019. The case originated at the District Land and Housing Tribunal of Arusha in Land Application No. 59 of 2011.

The application was brought under section 47(2) and (4) of the Land Disputes Courts Act, Cap. 216 R.E. 2019 and Rule 45(a) of the Tanzania

Court of Appeal Rules, 2009 G.N. No. 362 of 2017 and supported by an affidavit sworn by the Applicant. The respondents did not object the application; thus, no counter affidavit was filed.

The Applicant deposed that he was dissatisfied with the decision of this court in Land Appeal no. 17 of 2019 which was decided in favour of the Respondents herein. He filed a Notice of Appeal to appeal to the Court of Appeal of Tanzania on 3rd November, 2020. He stated that the intended appeal has overwhelming chances of success and further that, justice demands that the application be granted.

The Respondents did not file the counter affidavit. They addressed the Court that they leave the matter upon the Court to determine if the Applicant deserves to be granted leave to appeal to the Court of Appeal of Tanzania. Since the application was not resisted counsel for the Applicant moved the Court to grant the reliefs sought in the chamber summons.

Having examined the documents in support of this application I will pose here and make a determination on the merit of this application.

In order for the Applicant to be granted leave to appeal to the Court of Appeal he must adduce grounds for seeking leave and such grounds must be coated with merits (See **Razac Somji and 29 others vs.**

National Housing Corporation, HC, Misc. Civil Application No. 100 of 2004, at Mwanza following the firm view of **Spry VP**, in **Sango Bay Ltd v. Dresdner Bank** [1971] E. A. C. A. 17 and that of Lord Parker CJ, in **R. v. Stevens and Briston** [1968] Crim. L. R. 670)

In the case of **Citibank Tanzania Limited v. Tanzania Telecommunications Company Ltd and 5 others**, High Court of Tanzania (Commercial Division), Misc. Commercial Cause No. 6 of 2003, at Dar es Salaam (unreported) this Court expounded in detail on what the Applicant needs to demonstrate in order to be granted leave to appeal to the Court of appeal. The court held that:

"I think it is now settled that, for an application for leave to appeal to succeed, the applicant must demonstrate that the proposed appeal raises contentious issues worth taking to the Court of Appeal or are of such public importance, or contain serious issues of misdirection or non-direction likely to result in a failure of justice and worth consideration by the Court of Appeal....In an application of this nature, all that the Court needs to be addressed on, is whether or not the issues raised are contentious....the Court cannot look at nor decide either way on the merits or otherwise of the proposed grounds of appeal."

In the present application, the only reason adduced by the Applicant for seeking leave to appeal to the Court of Appeal is that the intended appeal has overwhelming chances of success. However, the Applicant did not attach the said intended appeal or provide requisite details for the

court to determine if the alleged chances of success are reflected in that document or details.

In the case of **British Broadcasting Corporation vs. Eric Sikujua Ngmaryo**, CAT, Civil Application No. 138 of 2004 (unreported) it was emphasized that, leave to appeal to the CAT is granted by discretion of the court that must be exercised judiciously and is granted where the intended grounds of appeal raise issues of general importance or novel point of law or prima facie arguable appeal.

In the present application, the Applicant failed to demonstrate that the application meets any of the conditions required for granting leave to appeal to the Court of Appeal. The application did not raise any issues of general importance or novel point of law or any arguable matter which requires an imposing interpretation by the Court of Appeal. Accordingly, I find no merit in this application and I dismiss it with costs.

It is so ordered.




K.N. ROBERT
JUDGE
17/9/2021