

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISCELLANEOUS LAND APPLICATION NO. 14 OF 2021

**(Arising from Land Appeal No.22 of 2019 at the High Court of Tanzania at
Mtwara, originating from Land Case No.8 of 2019 in the District Land and
Housing Tribunal for Lindi at Lindi)**

**MJAKA AHMED SAID (Administrator of the estate of the
late Ahmed Said).....APPLICANT**

VERSUS

RUKIA SHABAN YUSUFU.....1ST RESPONDENT

MFANGAVU MUSTAFA.....2ND RESPONDENT

RULING

5th Oct. & 14th Dec., 2021

DYANSOBERA, J.

By a Chamber Summons filed on the 03.06.2021, the applicant, Mjaka Ahmed Said (administrator of the estate of the late Ahmed Said) , seek under section 47 (2) of the Land Disputes Act [Cap. 216 R.E. 2019], the following orders, namely that the that the Court grant him leave to appeal to the Court of Appeal of Tanzania against the Judgment and Decree in Land Appeal No.22 of 2019 of the Mtwara High Court

dated 20th May, 2021. The application is supported by an affidavit duly affirmed by the applicant. The application was opposed by respondents vide the joint counter affidavit duly sworn by the learned Counsel Mr. Wilson Edward Ogunge.

The following brief background facts will serve the purpose of familiarising with the importance of this application. On 08/09/2009 the Kilwa Masoko Primary Court appointed the applicant the administrator of the estate of the late Ahmed Said (his father). However, after the demise of his late father Madungu Ahmed Said (applicant's sister) became incharge of the suit land since 1977. Thus, in 1999 the said Madungu Ahmed Said sold the suit land to Chilumba (the first respondent's husband). Thereafter, Chilumba passed away in 2004. After the burial ceremony of Chilumba, the title of the suit land passed to the first respondent by way of inheritance. In 2011 the first respondent disposed the suit land by sale to the second respondent. Also, the sale transaction of 2011 took place without the knowledge of the family of the late Ahmed Saidi the act which the applicant did not baptize.

Therefore, as the administrator of the estate of the late Ahmed Saidi, the applicant lodged Land Application No.8 of 2018 against the respondents. After a full trial, the District Land and Housing Tribunal decided in favour of the respondents. Aggrieved, the applicant appealed to this Court vide Land Appeal No.22 of 2019. As the first appellate court, it endorsed the decision of the Tribunal. Dissatisfied, the applicant wants to appeal to Court of Appeal of Tanzania. As a matter of practice, leave to the Court of Appeal of Tanzania is of utmost important and

necessary for the applicant to pursue his intended appeal to the Court of Appeal. Hence, this application.

When this application was placed for hearing on 05.10.2021 the parties opted to dispose of this application by way of written submissions. Indeed, the parties complied with the scheduling order. Thus, the applicant via his filed written submission, submitted that the cause of action arose when the administrator of the estate of the late Ahmed Said discovered that there was a trespasser in the suit land. He further contended that the suit property was said to have been sold to the respondents by one Madungu Ahmed Said who was incharge of the farm. He went further and argued that the purported sale of the suit property was in 1999 when at the time the administrator of the estate was yet appointed which makes the whole sale transaction illegal.

In addition, the applicant argued that it is the settled principle of law that a person who had no title or defective title cannot pass a better title to the transferee and any person who goes on transacting without inspecting as to the transferor's title. But if he, does it, it will be at his own peril. He further argued that the person who acquires a title from a person who has no title or any colour of right to the property cannot claim a better title against the rightful owner. In view of that argument, the applicant submitted that neither Madungu Ahmed Said nor Rukia Shabani Yusufu had a better title to claim or transfer the deceased property since the only person with the authority was the administrator of the estate of the deceased.

Furthermore, the applicant submitted that it is not in dispute from the records that the respondents bought the suit premises from a mere trustee who in fact and law had no colour of right to transfer or effect

sale of the suit land. Therefore, the applicant argued the Ward Tribunal and this court before it considered that the respondent had a valid title had firstly considered whether the transferor who passed or sold the suit premises was the rightful owner of the same.

Therefore, the applicant viewed that should the trial Tribunal and this Court had addressed to the above issue their findings could have obviously be in favour of the applicant because the records shows that the one who sold the suit premise had no colour of right to do so and therefore the purported sale was void. Besides, he argued that section 35 of the Law of Limitation Act [Cap 89 R.E. 2019] excludes time taken by the applicant to applicant to apply for letters of administration. The applicant went further computation of time started running on 8/9/2009 when he was granted the letters of administration thus, in view of that argument the applicant contended that he was within time. More so, the applicant submitted that there is a point of law to be determined by the Court of Appeal thus, he prayed this court to grant his application.

In response, the respondents submitted that there is a concurrent finding of the District Land and Housing Tribunal and this Court. In view of that, the respondent submitted that there is a concurrent fact the applicant's father passed away in 1977 when the applicant's sister one Madungu Ahmad Said came into occupation. In addition, the respondent argued that there is another concurrent finding that the Madungu Ahmad Said sold the suit land to Chilumba in 1999 who passed away in 2004. Thereafter, the suit land passed to the first respondent through inheritance. The second respondent sold the same to the second respondent in 2011. Thus, the respondent argued that where there are concurrent findings then the second appellate court cannot interfere it

unless there is misdirection or non direction. Also, respondent was of the view that the applicant's affidavit and submission do not reflect any misdirection or non direction in the finding of the two lower courts. As to the time the respondents were of the view that it started to run from 1999 though the applicant challenged the sale of 2011 which was between the respondents. In that respect, the respondents argued that the applicant could not challenge the sale transaction of 2011 without challenging the sale of land of 1999 which paved the way to the second sale. That is why the Tribunal and this Court found that the cause of action started to run from 1999 when Madungu Ahmad Said sold the farm to the first respondent's husband in 1999 which is well known to the applicant.

Reacting to the applicant's argument that the Madungu's sale of the suit land to the husband of first respondent was void as the Madungu was a mere trustee of the suit land then passed no title to Chilumba and the second respondent too. In view of that argument, the respondents argued that if that is the position then the sale by Madungu to Chilumba ought to be challenged before challenging the sale of 2011. Besides, the respondents also submitted that the applicant relied on section 35 of the Law of Limitation Act that the time the applicant's father passed away in 1977 should be excluded instead he persuaded this Court to count from 08/09/2009 when he was granted the letters of administration. Thus, the respondents argued that the applicant did not show when he petitioned for the letters of administration. They further argued that if there is something to exclude is only one year which is 2009.

More so, the respondents submitted that the applicant admits that his sister sold the disputed land in 1999 though did not challenge that sale.

Besides, the applicant claim that the cause of action accrued on 08/09/2009 when letters of administration were granted to him and while the original suit was filed in 2019 against the second sale of 2011 for which he wants leave for the Court of Appeal to determine the concurrent decisions of the Tribunal and this court.

Meanwhile, the respondents submitted that granting leave to appeal to the Court of Appeal is on the discretion of this court which need to exercised judiciously but depending on the circumstances of each case. The respondents went further and argued that for the court to grant leave to appeal to the Court of Appeal it has to establish that the dispute raises issues of general importance or novel point of law or the grounds of appeal raised by the applicant show a prima facie or arguable appeal. To cement their arguments, the respondents referred this court to the case of **Bulyanhulu Gold Mine Limited & 2 Others v. Petrolube (T) Limited & Another**, Civil Application No.364/16 of 2017 CAT at Dar es Salaam which cited with approval the case of **British Broadcasting Corporation v. Eric Sikujua Ng'maryo**, Civil Appeal No.133 of 2004 and **Rutagatina C.L. v. The Advocates Committee and Another** (both unreported) demonstrated how leave to appeal to the Court of Appeal is granted.

In addition, the respondents insisted that since the applicant does not dispute the sale of suit land to Chilumba by her sister one Madungu Ahmad Said in 1999 which was not challenged by the applicant. In view of that submission the respondents argued that Chilumba derived the title of the suit land from the sale of 1999. The same was transferred to the first respondent when inherited the same after the death of Chilumba. From there, the title passed to the second respondent by way

of sale from the first respondent to the second respondent. Thus, the respondents counted from 1999 to 2019 when the applicant lodged his land application at the Tribunal is a period of twenty (20) years. In light of that submission, the respondents argued that the applicant filed his land application out of time.

Lastly but not least, the respondents submitted that the applicant failed to advance issues of general importance or a novel point of law and also has failed to show prima facie or arguable appeal.

In rejoinder, the applicant reiterated what he submitted in chief and was of the view that the submission by the respondents was baseless since they tend to put on his mouth that he admitted that Madungu sold the suit land to the respondents. But what he submitted in chief was that he discovered there was a trespasser in the suit land that belonged to his late father which was said to have been sold. In addition, the applicant submitted that for the interest of justice, fair trial, the estates of the deceased and beneficiaries of the deceased he pleaded this court to grant the application so that the Court of Appeal can determine this matter on point of facts and law.

Besides, the applicant argued that the sale agreements of suit land after the death of his father were illegal since he, as the administrator does not recognise those dispositions of the suit land and he maintained further that the application claiming ownership over the suit land was filed within time. He also submitted that as to the cited case of **Bulyanhulu Gold Mine Limited & 2 Others v. Petrolube (T) Limited & Another** (supra) is in support of application since he demonstrated the grounds of appeal with general importance or have shown an arguable appeal for leave to be granted vide his grounds of

appeal. The applicant further contended that he has shown good cause hence his application be granted so that he can exercise his constitutional right.

Having considered both the record and the submission made by the parties. The requirement to seek leave to appeal to the Court of Appeal is governed by section 5 (1) (c) of the Appellate Jurisdiction Act, [Cap. 141 R.E. 2019] provides: -

"5. -(1)(c) In civil proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal-
With the leave of the High Court or of the Court of Appeal,
Against every other decree, order, judgment, decision or finding of the High Court"

Meanwhile, I am aware of the cited case especially the **British Broadcasting Corporation v. Eric Sikujua Ng'maryo** (supra) as it was cited in the case of **Rutagatina C.L. v. The Advocates Committee and Another** (supra) where the Court observed that: "Needless to say, leave to appeal is not automatic. It is within the discretion of the court to grant or refuse leave. The discretion must, however judiciously exercised and on the materials before the court.

As a matter of general principle, 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 (see: *Buckle v. Holmes* (1926) ALL E.R. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted"

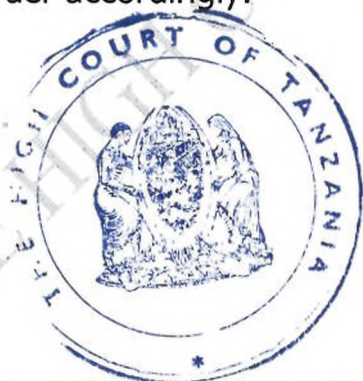
In view of the above holding, it is well known among the learned brethren and legal fraternity that leave is not automatic but is subjected to certain conditions and that is why the applicant has come to this court and pray for it. In the referred case the Court insisted that the grounds should merit a serious judicial consideration by the Court. Also, I am aware that the duty of this court in this application is not to determine the merits or demerits of the grounds of appeal if could have been raised by the applicant at this stage or which he intends to raise at the later stage if leave to appeal to the Court of Appeal will be granted. But this court will only look if the applicant has fulfilled all the conditions depicted in the **British Broadcasting Corporation v. Eric Sikujua Ng'maryo** (supra).

Besides, as to the application at hand, this court is moved to ascertain as to whether the applicant vide his duly affirmed affidavit and submission raised the grounds which sufficiently warrant a serious consideration of the Court of Appeal. As far as this application is concerned, the applicant has not attached his intended grounds of appeal in his application so as to afford this court a chance to determine if those grounds feature within the stipulated conditions in the **British's** case. However, leave is grantable at the discretion of this court which as stated above need to be exercised by this court judiciously. Therefore, in regard to that short fall this court finds that it is important to go through the affidavit and the submission of the applicant so as to see if the applicant's grounds have raised issues of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal.

As to the grounds argued by the applicant vide his affidavit and submission has advanced the reason for seeking this leave to appeal to the Court of Appeal of Tanzania that there was illegal sale of the suit land by persons who had no good title to disposed it rather than himself as the administrator of the estate of the late Ahmed Said. Besides, the applicant raised the issue of time of limitation of instituting his claim against the respondents on the basis of adverse possession though the respondents strongly resisted it and instead argued that the applicant land application at the Tribunal was filed out of time. Also, he wants the Court of Appeal to pay a look on the adverse possession relied by the Tribunal and this court as the first appellate court in deciding in favour of the respondents.

As to the nature of these rival arguments I am satisfied that the applicant has raised grounds which have general importance or novel point of law which need intervention of the Court of Appeal. I accordingly allow the application and hereby grant leave to appeal to the applicant to the Court of Appeal against the judgment and decree of this court in Land Appeal No.22 of 2019.

Order accordingly.



A handwritten signature in blue ink, appearing to read "W.P. Dyansobera".

W.P. Dyansobera

Judge

14.12.2021

This ruling is delivered at Mtwara under my hand and the seal of this Court on this 14^h day of December, 2021 in the presence of the

applicant in person and Mr. Emmanuel Ngongi, holding brief for Mr. Wilson Edward Ogunde, the learned Counsel for the respondents.



A handwritten signature in blue ink, appearing to read "W.P. Dyansobera", is positioned above the printed name.

W.P. Dyansobera

Judge

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