

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

AT KIGOMA

LAND DIVISION

(ORIGINAL JURISDICTION)

MISCELLANEOUS LAND APPLICATION NO. 54 OF 2021

(Original from Land Appeal No. 28/2021 of the High Court Kigoma Before A. Matuma, J., Originating from Land Application No. 111 of 2014 of the District Land and Housing Tribunal for Kigoma)

JUMA S/O LUPOLI.....APPLICANT

VERSUS

CHARLES S/O GOBESE.....RESPONDENT

R U L I N G

30/03/2022 & 21/04/2022

L.M. MLACHA, J.

This is a ruling on an application for leave to appeal to the Court of Appeal of Tanzania against the decision of this court made in Land Appeal No. 28/10/2021 (Matuma J). The application is made under section 5(1)(c) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2019, rule 45(a) of the Court of Appeal Rules 2009 as amended by rule 6 of the Tanzania Court of Appeal (Amendments) Rules 2017 read together with section 47(2) of the Land Disputes Court Act, Cap. 216 R.E. 2019. It is accompanied by the

affidavit of Juma Lupoli who is the applicant. The respondent, Charles Gobese was duly served and lodged a counter affidavit in opposition.

Mr. Method Kabuguzi appeared for the applicant while the respondent was represented by Ms. Elizabeth Twakazi. Counsel made oral submissions. Mr. Kabuguzi referred the court to para 4 (i) and (ii) of the affidavit which contains the grounds upon which this application is based. It reads as under;

- i. Whether, in reversing the trial District Land and Housing Tribunals decision which had been given in my favour the Honourable High judge (sic) misdirected himself in the evaluation of the entire evidence on record.*
- ii. Whether on account of the entire evidence on record, the decision of this Honourable court that the respondent's evidence is heavier and reliable regarding the exchange of the suit land with the applicant's land, which was undisputedly sold by the respondent, was legally proper.*

Counsel submitted that, the court misdirected itself. It did not consider key aspects of the matter correctly. He said that, the parties exchanged the land in 1989 but the complaint was raised in 2005. He said that if the

court had taken into account this aspect it could not reach at the decision it made.

Ms. Elizabeth Twakazi had the view that the grounds set forth in para 4(i) and (ii) of the affidavit are not good grounds upon which leave can be granted. She had the view that the judge analyzed the evidence properly and arrived at the correct decision. She said that the respondent gave the applicant one acre for use to plant pineapples. In exchange, he was given an acre to plant cassava. Parties did not give the land to each other permanently, she submitted. She added that the applicant invaded the respondent's land, 7 acres. She supported the decision of this court and argued the court to reject the application.

The grounds upon which leave to appeal can be granted were well explained by the Court of Appeal in **BRITISH BROADCASTING CORPORATION v. ERIC SIKUJUA NG'WAMARYO**, (CAT), Civil application No. 138 of 2004, pages 6 -7. The court said thus:

"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."*

See also, Rutagatina C.L vs The Advocates Committee and Another, Civil Application No. 98 of 2010, **Jireys Nestory Mutalemwa v. Ngorongoro Conservation Authority** CAT Civil Application No. 154 of 2016 and **Markus Kindole vs Burton Mdinge** CAT Civil Application no. 137/13 of 2020

So leave is not granted automatically. It is granted at the discretion of court. It 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*. The judge hearing the application has to go through the decision of the court (made by his brother or sister judge) and the grounds upon which leave is sought and find if there is i) an issues of general importance or ii) a good point of law or a prima facie appeal or an arguable appeal. He will be guided by these elements. He must look at the judgment and submissions made to find if they exist. The judge is

however, in my opinion, not expected to go to the details of the judgment and discuss its merits or demerits. That is the work of the Court of Appeal. His role is to see if any of the four elements exists. If he can find any of them, in his discretion, he will grant leave. To the contrary, if it is found that none of them exists or where the application is found to be frivolous, vexatious or useless or hypothetical, leave must not be granted.

Going through the judgment of this court, the grounds set in para 4(i) and (ii) and the counsel submission, it has come to my mind that the parties are quarrelling on the way the judge had come to his conclusions. The applicant has the view that if the judge had taken into account the fact that the exchange of the Land was done in 1989 and went on without any complaint up to 2005, he could not reach at the decision he made. The respondent says that there was an exchange of the land but it was not done permanently. Further that the applicant invaded the respondent's land, seven acres, not just one acre. Looking at what they say and reading at the judgment, I have the view that the parties have a serious matter worthy the determination of the court of appeal. There is an arguable appeal so to say.

With that in mind, leave is accordingly granted. The applicant is given leave to appeal to the Court of Appeal as prayed. It is ordered so. No order for costs.



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L. M. Mlacha

Judge

21/4/2022

Court: Ruling delivered in the presence in parties and Mr. R.G. Kabuguzi Advocate for the Applicant and Ms. Elizabeth Twakazi Advocate, for the Respondent.



A handwritten signature in blue ink, appearing to be "L. M. Mlacha", written over a horizontal line.

L. M. Mlacha

Judge

21/4/2022