

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

AT BUKOBA

MISC. LAND APPLICATION NO. 108 OF 2021

*(Arising from the Judgment and Decree of the High Court of Tanzania (District Registry of Bukoba) in
Land Appeal No. 23/2020)*

ALOYSIUS BENEDECTO RUTAIHWA..... APPLICANT

VERSUS

EMMANUEL BAKUNDUKIZE KENDUMURO..... 1ST RESPONDENT

MUGANYIZI EMMANUEL.....2ND RESPONDENT

STANSLAUS MUTAHYABARWA.....3RD RESPONDENT

HASSAN IBRAHIM KAMILI.....4TH RESPONDENT

JUSTINIAN KINYAMWEZI.....5TH RESPONDENT

WINSTON CORNELIUS.....6TH RESPONDENT

HAMIDU RWEZAULA.....7TH RESPONDENT

TRYPHONE RWEZAULA.....8TH RESPONDENT

EVODIUS BONIFACE.....9TH RESPONDENT

HILDEFONSI REVELIAN.....10TH RESPONDENT

RULING

Date of Ruling: 01.04.2022

A.Y. Mwenda, J

ALOYSIUS BENEDECTO RUTAIHWA (the Applicant) through the services of Mr. Bernad Mbakileki learned Counsel, filed this application for the following orders:

- i. That the court be pleased to grant the Applicant, leave to appeal to the Hon. Court of Appeal of Tanzania against the whole of Judgment and Decree of the Hon. High Court of Tanzania (Ntemi N. Kilekamajenga,J) dated 27th August 2021 in Land No. 23 of 2020[sic]
- ii. Costs of the Application be provided for, and
- iii. Any other relief as the Hon. Court may deem just to grant.

This Application is brought under Order XLIII, Rule 2 of Civil Procedure Code, [Cap 33 R.E.2019], Section 47(2) of the Land Disputes Courts Act, [Cap 216 R.E 2019] and Rule 45 (a) of the Court of Appeal Rules, 2009 as amended. It is supported by affidavit sworn by the applicant. After being served with the application's papers, the 3rd, 4th and 5th respondents engaged Mr. Abel Eustad Rugambwa, learned counsel, and the 6th up to 10th respondent appeared in person. The 1st and 2nd respondent are reportedly dead. Counter affidavits were thus prepared and filed accordingly.

The facts giving rise to this application are that in Application No. 152 of 2014 before the District Land and Housing Tribunal for kagera at Bukoba, the applicant sued the respondent for declaration orders among others, that the respondents are trespassers to the suit land; for a permanent injunction restraining the respondents from occupying, developing the suit land /or making any transfer thereof; for an order compelling the respondents to demolish the houses built on the suit land and all structures be removed at their own costs and expense and or

be confiscated ;an order that the respondents jointly and severally pay the Applicant the sum of Tshs. 300,000,000/= being mesne profits which would have accrued to the Applicant if he had been in possession of the suit land but for their trespass (sic); for an order that the respondents jointly and severally pay the applicant general damages and/or compensation for unlawful utilization of the suit land in the discretion of the Tribunal. Having heard the evidence from both parties, the Hon. Chairman pronounced judgment in favor of the applicant and decreed that the respondents are mere trespassers. He ordered the respondents to be compensated by the applicant for the said building after evaluation is conducted. Aggrieved by the Trial Tribunal's judgment, the applicant filed Land Appeal No. 23 of 2020 before this court which was dismissed. The applicant has now filed this application seeking leave to appeal to the Court of Appeal of Tanzania.

During hearing of this application both parties were in attendance. The applicant was represented by Mr. Bernard Mbakileki and the 3rd, 4th and 5th respondent were represented by Mr. Rugambwa learned counsel while the remaining respondents appeared in person.

In the cause of introducing himself Mr. Abel Rugambwa, learned counsel informed this court that he, having gone through the application papers found that there are points worthy going before Court of Appeal of Tanzania for determination and for that matter he supports this application.

Having heard submission by Mr. Abel Rugambwa, Mr. Mbakileki learned counsel for the applicant submitted that paragraphs 8, 10 and 11 of the applicant's affidavit contain important legal and factual issues which need attention of the Court of Appeal of Tanzania. He concluded by praying the contents of the applicant's affidavit to be adopted to be part of his submission. On their part the 6th up to 10th respondents did not object this application.

Having summarized the submission by the learned counsel and the respondents, it is now the duty of this court to deliberate on this application.

This court went through the applicant's affidavit and at paragraph ten (10), the applicant is complaining that this court did not give the parties adequate opportunity to be heard per the *audi alteram partem* principle on the issue of illegality of the proceedings which was raised by the court *suo motu*.

Looking at this point this court is satisfied that this is arguable point of appeal to be placed before the court of appeal. This conclusion is drawn from authority in the case of **Six Telecoms Company Limited V. Capital Properties Limited, Misc. Land Case Appeal No.269 of 2017 (unreported)** where the Court of Appeal held inter alia that:

"Leave to appeal will be granted where the grounds of appeal raise issues of general importance, a novel point of law or where the grounds show a prima facie or arguable appeal."

On the basis of the above authority this court finds merits with this application. I accordingly allow it and costs shall be in due cause.

Order accordingly.



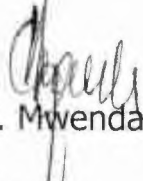

A.Y. Mwenda

Judge

01.04.2022

This Ruling is delivered in chamber under the seal of this court in presence of Mr. Scarius Bukagile learned counsel for the applicant; Ms. Gisela Rugemalira for 3rd, 4th and 5th respondents; the 8th and 10th respondents and in absence of the 1st, 2nd respondent (who are reportedly dead) and 6th, 7th and 9th respondents.




A.Y. Mwenda

Judge

01.04.2022

