

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. LAND APPL. NO. 94 OF 2021**

**(Originated from Land Application No. 7 of 2019 at the District Land and Housing Tribunal  
and Land Appeal No. 72 of 2019 in the High Court of Tanzania at Arusha.)**

**JOSEPH HHAWU AMNAAY.....APPLICANT**

**VERSUS**

**PETRO ASKWARI NIIMA.....RESPONDENT**

**RULING**

**25/06/2022 & 22/07/2022**

**GWAE, J**

The applicant is seeking leave to appeal to the Court of Appeal of Tanzania against the whole decision of this court delivered on the 11<sup>th</sup> October 2021 in Land Appeal No. 72 of 2019. The application is brought under rule 45 of the Court of Appeal Rules and it is accompanied by an affidavit of the applicant, Joseph Hhawu Amnaay where reasons for the application are contained therein. The respondent on the other hand objected the application through his sworn counter affidavit.

The facts giving rise to the present application is to the effect that, the applicant instituted a land case against the respondent (Monica Amnaay now deceased) and subsequently, Petro Askwari (the respondent herein) was joined as a legal representative of the late Monica Amnaay. The suit was filed at the District Land and Housing Tribunal for Karatu (to be referred as trial tribunal) where the applicant alleged that the respondent trespassed into his land measuring 6x140 footsteps. He further sought for an order that the respondent to be ordered to vacate the suit land and pay damages.

Unfortunately, the trial tribunal gave its judgment in favour of the respondent after being satisfied that the applicant failed to prove his case. Dissatisfied by the decision of the trial tribunal the applicant filed an appeal to this court where he also lost. As per the averments in his affidavit, the applicant has already filed notice of his intention to appeal to the Court of Appeal against the decision of this court, and since it is the requirement of the law that in suits of this nature he must obtain first leave to appeal to the Court of Appeal, the applicant has thus filed this application.

When the matter came for hearing the applicant was under the legal aid from Legal and Human Rights Centre, whereas the respondent was

represented by Mr. Bungaya Matle Panga, the learned counsel. With leave of the court the application was disposed by way of written submissions.

Supporting the application, the applicant reiterated what he stated in his affidavit and cited the following cases to support his application; **Tanzania Post Cooperation vs Jeremiah Mwandu**, Civil Appeal No. 474 of 2020 (Unreported) and **British Broadcasting Corporation vs Eric Sikujua Ng'maryo**, Civil Application No. 138 of 2004 (Unreported).

The respondent on his submission stated that the applicant has not stated reasons for this court to grant the application. He thus prayed for the dismissal of the application.

In the present application, the decision subject of the intended appeal originated from a land dispute lodged at the District Land and Housing Tribunal for Karatu. Thus, to appeal to the Court of Appeal against the decision of this Court, the applicant needs, as a condition precedent, leave to appeal to the Court of Appeal.

The principle of law governing grant of leave to appeal to the Court of Appeal is well settled. In a proper application, the duty of this court is just to look as to whether there are contentious issues requiring determination

by the Court of Appeal. In the case of **British Broadcasting Corporation vs. Erick Sikujua Ng'maryo**, Civil Application No. 138 of 2004 (unreported). The Court of Appeal inter alia said:

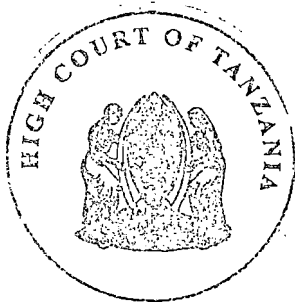
*"Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily the proceedings as a whole reveals such disturbing feature as to require the guidance of the Court of Appeal. The purpose of the provision is therefore to spare the court the spectra of un-meriting matters and enable it to give adequate attention to cases of true public importance"*

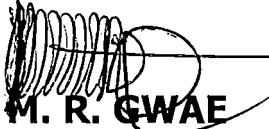
The Court of Appeal went on insisting on discretionary use of powers in granting leave, and had the following to say:

*"Needless to say, leave to appeal is not automatic. It is within the discretion of the work of the court to grant or refuse leave. The discretion should however be 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 novel point of law or where the grounds show a prima facie or arguable appeal... However, where the grounds of appeal are frivolous, vexatious, useless or hypothetical, no leave will be granted."*

I have examined the application, parties' submission together with the judgments of both the trial tribunal and the first appellate court, I find that there are issues of general importance to be determined by the Court of Appeal of Tanzania. Consequently, this application is granted. Costs of this application shall abide the results of the intended appeal.

It is so ordered.



  
**M. R. GWAE**  
**JUDGE**  
**22/07/2022**