

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

**MUSOMA SUB REGISTRY**

**AT MUSOMA**

**MISC. LAND APPLICATION NO 58 OF 2021**

*(Application arising the Judgment of the High Court of the United Republic of Tanzania at Musoma, (Hon. Mkasimongwa, J) in Land Appeal No 11 of 2021, Originating from District Land and Housing Tribunal of Tarime at Tarime Land Case No 20 of 2016)*

**JOSEPH CHACHA MAGABE ..... APPLICANT**

***VERSUS***

**BOARD OF TRUSTEES OF CCM .....RESPONDENT**

**RULING**

31<sup>st</sup> March and 29<sup>th</sup> April 2022

**F. H. MAHIMBALI, J.:**

This chamber application is brought under section 5 (1) c of the Appellate Jurisdiction Act, Cap 141 R. E. 2019 and Rule 45 (a) of Tanzania Court of Appeal Rules as amended by Rule 17 of GN 345 of 2019 and section 47 (1) of the Courts Land Dispute Settlement Act, Cap 216 in which the applicant after being aggrieved by the decision of this Court in Land Appeal no. 11 of 2021 is praying for leave to appeal to the Court of Appeal. The application is supported by the affidavit of the applicant.

During the hearing of the application, the applicant appeared in person, whereas the respondent was dully represented by Mr. Onyango Otieno, learned advocate.

The applicant being a lay person in law, had nothing more to add, he just prayed that his affidavit in support of the application containing the reasons for the application be adopted to form part of this submission arguing further that since appeal is his constitutional right, he humbly prayed that the application be granted as prayed.

On the other hand, Mr. Otieno leaned advocate for the respondent resisted the application basing on the reason, that leave to Court of Appeal is not an automatic right. There must be clear reasons for the said grant such as conflicting decision, disturbing features, public concerns.

He submitted that, going through the fifteen grounds in the affidavit, he had not encountered any viable reason for the said grant. What is featured at paragraph 4 (i) – (iv) are issues of evidence. As there are no disturbing features, the Court of Appeal cannot be invited for issues of facts/evidence. As the same are well dealt with by the two courts below, this application has no good reasons for the said grant.

He concluded his submission by praying that the counter affidavit dully deponed, be adopted and considered. Thus, the application be dismissed with costs for being devoid of merits.

The main concern for the consideration of this application is whether it is merited. The law is, leave to appeal will be granted where the grounds of appeal raise issues of general importance or an ovel point of law or any arguable grounds of appeal which really needs to move the great legal minds of Justices of the Court of Appeal for determination and that the intended appeal is nothing other than the delaying tactics in view of denying the respondent enjoyment of the fruits of her judgment and decree. An application for grant of leave to appeal to the Court of Appeal is not a matter of a mere formality. A party intending to be allowed to appeal must give sufficient reasons that the intended appeal carries arguable grounds on points of law and/or fact which needs the attention of the Court of Appeal on serious points of law or law and fact. The applicant praying for grant of eave must demonstrate that he stands reasonable chances of success. This was held by the Court of Appeal in **Rutagatina C.L.v. The Advocates Committee & Another**, Civil Application No.98 of 2010.

In the proposed grounds of appeal by the applicant as transpiring in his sworn affidavit accompanying the application at para 4, feature the following legal issues for consideration by the Court of appeal:-

- (i) That the learned Appellate Judge erred in law when he failed to take into consideration fundamental principles of National Land policy. That a person found on a suit land he is entitled for allocation of suit land after survey.*
- (ii) That the learned Appellate Judge, erred in law when he failed to take into consideration that the fundamental principles of the National Land Policy that all people are equal in regard to land law.*
- (iii) That the learned Appellate Judge erred in law when he failed to recognize that all land in Tanzania is Public Land vested in the President as a Trustee on behalf of all citizens.*
- (iv) That the learned Appellate Judge erred in law when he failed to ensure that existing right in land recognized long – standing occupation or use of Land are clarified and secured by laws thus, appellant had acquired the suit land and the building structure on it from her grand – mother the late Mariamu Nyangoye in 1984, who had acquired the said land in 1942 under customary right of occupancy, and built on it the dwelling house and performed other unexhausted improvements of planting wood and fruit trees etc.*

- (v) *That the learned Appellate Judge erred in law when he failed to account that an interest in Land has value and that Value is taken into consideration in any transaction affecting that right of land disposition.*
- (vi) *That the learned Appellate Judge, erred in Law when he failed to order respondent to pay full compensation to appellant Tsh. 150,000,000/= whose right of occupancy or recognised long standing occupation of 7over a period of 79 years from 1942 -2021, in terms of market value, disturbance allowance, transport allowance an loss of profits or accommodation.*

In consideration of the application, the supporting affidavit and the submissions by the both parties, it appears to me that there are arguments which are going to the merits of the issue which is an indication that the issues are arguable. These are as provided under paragraph 4 of the affidavit in support of the application cited above. It is not the duty of this Court to discuss the issues but to find whether there is merit in the issues which require the determination of the Court of Appeal. In *Jireyes Nestory Mutalemwa vs. Ngorogoro Conservation Area Authority/CAT*, Application No.154 of 2016 (Unreported), the Court of Appeal observed that;

*"The duty of the Court at this stage is to confine itself to the determination of whether the proposed grounds raise an*

*arguable issue(s) before the Court in the event leave is granted - it is for this reason the Court brushes away the requirement to show that the appeal stands better chances of success a factor to be considered for the grant of leave to appeal. It is logical that holding so at this stage amounts to prejudging the merits of the appeal”.*

Guided by the above authority, it is my view that it is not within the power of this Court to go into details of the case which appeal is sought but rather find whether there are arguable grounds for appeal and whether there are chances for the appeal to succeed. As I find them existing, the application is merited.

In the upshot, I am convinced that the application meets the legal threshold for its grant. Accordingly, I grant it as prayed. Each party to bear own costs.

DATED at MUSOMA this 29<sup>th</sup> day of April, 2022.



  
F. H. Mahimbali

**JUDGE**

**Court:** Judgment delivered this 29<sup>th</sup> day of April, 2022 in the presence of the Appellant, Mr. Gidion Mugo, RMA and Respondent being absent.

Right of appeal is explained.



F.H. Mahimbali

**JUDGE**

29/04/2021