

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

MISC. LAND APPLICATION NO 83 OF 2021

(Arising from the High Court of United Republic of Tanzania at Musoma in Land Appeal No 6 of 2021 the same originating from Land Application No 130 of 2018 of the District Land and Housing Tribunal for Tatime at Tarime)

JOHN BUNINI APPLICANT

VERSUS

CHARLES M. MBUSIRO RESPONDENT

RULING

6th June & 22nd July , 2022

F. H. MAHIMBALI, J.

The applicant in this case has been aggrieved by the decision of this Court in Land Appeal No. 6 of 2021 dated 14th September, 2021 overturning the decision of the District Land and Housing Tribunal, thus, intends to appeal to the Court of Appeal. This application for leave is in compliance with the law under section 47(2) of the Land Disputes Courts Act, Cap 216 R.E 2019.

According to the reasons contained into the affidavit and supplementary affidavits of the applicant, the grounds of appeal that this Court is called upon to grant leave for appeal to Court of Appeal are five, namely: -

- 1. Whether it was proper for the appellate court to fault the findings of the trial tribunal in the circumstances where there is no additional evidence adduced.*
- 2. Whether it was appropriate for the appellate court to quash and set aside the decision of the trial tribunal when the claim was proved to the balance of probabilities and the evidence on record was properly evaluated.*
- 3. Whether it was proper for the appellate court to fault the decision of trial tribunal on reason that the adduced evidence was contrary to the pleadings when the parties knew what was in issue and they proceeded to trial on that issue by adducing evidence.*
- 4. Whether the High Court erred in law for failure to make a declaration as who is the legal owner of the disputed land.*
- 5. Whether there was sufficient evidence paraded by the respondent to prove the ownership of the disputed land on his side.*

Arguing in support of the application, Mr. Daud Mahemba learned counsel for the applicant, while adopting both the affidavit and the supplementary affidavits in support of the application submitted the application is filed under section 47 (2) of the LDCA, Cap 216 R. E. 2019 and it is accompanied by the affidavit and supplementary affidavit of the applicant.

As to why the leave of the court is sought to CAT, he submitted that in the supplementary affidavit, the first ground is whether the High Court erred in law for failure to make a declaration as who is the legal owner of the disputed land. It was his submission that, as per High court judgment, the Honourable Judge failed to make a declaration order/order in his judgment who between the two owns the said disputed land. The last paragraph (on page 9) of the High Court's judgment, the judge only faulted the trial tribunal's findings but eventually failed to make a clear order as who is the owner between the two. As per ground two of the appeal at DLHT which is the determining ground as per honourable appellate judge, the ground was that the trial chairperson erred in law and fact for not considering the fact that the respondent didn't prove on the allegation that his father leased suit land to the appellant's father.

On the second ground whether there was sufficient evidence paraded by the respondent to prove ownership of the disputed land on his side, he submitted that going by record in the DLHT, there is no evidence that the evidence was analysed to reach the court's findings that Charles M. Mbusiro was the owner. All that was pleaded, is that the applicant is the owner of it. But the DLHT did not make any evaluation of the said evidence.

In the third ground whether it was proper for the appellate court to set aside decision of the trial tribunal on when the claim was proved to the balance of probabilities and the evidence on record was properly evaluated, he submitted that the applicant had credible evidence explaining how he got the said disputed land. As the applicant testified very well, the argument that there was confusion in evidence is unwelcomed.

Lastly, whether it was proper for the appellate court to fault the decision of the trial tribunal on reasons that the adduced evidence was contrary to the pleading when the parties knew what was in issue and they proceeded to trial on that issue by producing evidence, he submitted that the essential issue before DLHT was who was the rightful owner of the disputed plot. The DLHT rightly decided as per merits of

the evidence in record. He clarified that as per judgment dated 14/09/2021 the Honourable appellate judge based much of his time on whether pleadings are incompatible with the evidence. There is abundant proof on that assertion. The argument that there was conflict between record and judgment of the trial tribunal, he countered it. As per evidence by the prosecution's witnesses, all that was well done.

On the above submissions, Mr. Mahemba invited this Court determine that these are arguable points to be determined by CAT.

On the other hand, Ms Happiness Roberth, learned advocate for the respondent strongly resisted the application attacking only two grounds in the applicant's supplementary affidavit. With the first ground, she submitted that it is obvious that the respondent successfully challenged the decision of the trial court before this Court. By that decision of the High Court, it suggests that the respondent is the lawful owner of the suit land. It did so by appreciating the evidence in record. Thus, this ground of the appeal must fail.

On the second ground of appeal that whether there was sufficient evidence, she submitted that as per available evidence and the analysis done by the High Court, it was right to over turn the decision of the

DLHT it is because it was right to do. In weighing the scales thereof, the applicant is the one who was in confusion. Therefore, Ms Happiness was of the firm view that the High Court arrived at a just decision. At page 6 of the said judgment, it is clear with the reasoning of the High Court judge. Thus, this appeal lacks merit and is bound to fail.

With the third and fourth grounds which he argued them together, she submitted that in her digest to the records of trial tribunal, it is evident that the case was decided on balance of probabilities. Production of evidence at trial is inconclusive that the evidence is not in conflict. As per applicant's evidence in record says that he got the plot from village council. He further hired it to the respondent's father. As there is no evidence on that assertion, it is evident that the applicant's case was weaker for being inconsistent. Therefore, the decision of the trial tribunal was righteous. She thus prayed that this honourable court to revisit the lower tribunal record and evaluate the evidence thereof and see if there is any merit of the application because leave to CAT is not an automatic right but must keenly observe the principles of law. She concluded that the application be dismissed with costs.

The central issue for consideration is whether, this application is meritorious. In consideration of the application, the supporting affidavit,

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. 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. Ngorongoro 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 further details of the case in which appeal is sought but rather find whether there are arguable grounds for appeal and whether there are chances for the appeal to succeed.

In the upshot, I am convinced that the application meets the legal threshold for its grant. Accordingly, I grant it as prayed pursuant to section 47(2) of the LDCA. Each party to bear own costs.

DATED at MUSOMA this 22nd day of July, 2022.



F.H. Mahimbali

JUDGE

Court: Ruling delivered this 22nd day of July, 2022 in the presence of both parties and Mr. Gidion Mugo – RMA.

F.H. Mahimbali

JUDGE

22/07/2022