

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

**MISC LAND APPLICATION NO. 9 OF 2020**  
(Emanating from Civil Appeal No. 2 of 2020 of the High court of Tanzania  
at Shinyanga)

**NG'IHAYA DOTTO.....APPLICANT**

**VERSUS**

**MOHAMED WEJA.....RESPONDENT**

**RULING**

*25<sup>th</sup> May & 1<sup>st</sup> July 2022*

**MKWIZU, J:**

Applicant, Ng'hwaya Dotto has by chamber summons made under section 5 (1) (e) of the Appellate Jurisdiction Act, Rule 45 (a) of the Court of Appeal Rules, 2009, and section 47 of the Land Disputes Court Act (Cap 216 R.E 2002) filed an application for leave to appeal to the Court of Appeal thus:

- 1. " That, this Honourable Court be pleased to grant leave to appeal to the appeal to the Court of Appeal of Tanzania against the Judgment Civil Appeal No. 2 of 2020.*
- 2. Costs of the application be provided for*
- 3. Any other orders of this honourable Court may deem fit to grant."*

The application is supported by an affidavit sworn by the applicant. Contesting the application, the respondent filed a counter affidavit. The hearing was conducted by written submissions and both parties did comply with the filing schedules hence this ruling. Unfortunately, applicants' submissions could not assist the court in determining this application for it was made in respect to the grounds of appeal as if this court was the Court of Appeal sitting to adjudicate the proposed grounds. On his party respondent counsel apart from adopting the respondent's counter-affidavit, he expounded on the principles governing application for leave to appeal to the Court of Appeal as established in the case of **Harban Haji Mosi and Another vs Omary Hilal Seif and another**, [2001] TLR 409. Referring the court to paragraph 11 of the applicant's affidavit, the respondent's counsel maintained that two main points on the assessment of general damages and evaluation of evidence were put forth for consideration by the applicant but without indicating specific errors neither in assessing general damages nor in evaluating the evidence and the affidavit does not fault the appellate court's decision for upholding the trial court's decision. The respondent's counsel was categorical that the trial court at p 6-7 exercised its discretionary powers judiciously by considering the circumstances of the case before awarding the general damages the reason why the appellate court refused to interfere with the trial court's discretion. And that the defence evidence was properly considered by the court.

I have inquisitively considered the matter. Principally, leaves to appeal to the Court of Appeal is granted where there is demonstrated prima facie

ground calling for the attention of the Court of Appeal. This position was pronounced in **Sango Bay v Dresdner Bank A.G** [1971] EA 17 that:-

*"Leave to appeal will be granted where prima facie it appears that there are grounds which merit serious judicial attention and determination by a superior Court."*

Again, in **Rutagatina C. L. vs The Advocates Committee and Another**, Civil Application No. 98 of 2010 (unreported), the Court of Appeal held that ;

*"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 £ R. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted. (Emphasis added)*

Applicants' averment in paragraph 11 (i), (ii) and (iii) of the affidavit contains three grounds presented for leave. They are drafted thus.

- i. Whether it was proper for the trial court magistrate to award 4,000,000/= to the Plaintiff as general damage.

- ii. Whether the trial court considered the evidence of the defendant who is now the appellant
- iii. Whether the trial magistrate assessed the damage using a correct principle.

Since this court is not expected to determine the merits or otherwise of the substantive issues, I will avoid going further than determining whether there are points of law for the Court of Appeal's consideration.

I have carefully read the decision by my brother Mdemu J, dated 3/7/2020, the affidavit in support of the application as well as the points raised by the applicant. I find the points listed by the applicant raise important points of the law calling for judicial consideration by the court of appeal.

The application is therefore granted with no order as to costs

It is so ordered.



**DATED** at **SHINYANGA** this **01<sup>th</sup>** day of **JULY, 2022.**

*E. Y. Mkwizu*  
**E. Y. MKWIZU**  
**JUDGE**  
**01/7/2022**