

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

MISC. LAND APPLICATION NO. 48 OF 2022

(Arising from the judgment of the High Court of Tanzania at Bukoba in Land Appeal No. 15 of 2021; Originating from Land Application No. 101 of 2017 of the District Land and Housing Tribunal for Kagera at Bukoba)

ALPHONCINA ALEX MABATI.....APPLICANT

VERSUS


ALFREDINA ALPHONECE.....RESPONDENT

RULING

15th August & 15th August 2022

Kilekamajenga, J.

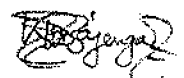
The applicant in this case, after being aggrieved with the decision of this court, preferred the instant application seeking leave of this court to appeal to the Court of Appeal of Tanzania. The application was made under **section 47(2) of the Land Disputes Courts Act, Cap. 216 RE 2019** and **Rule 45(a) of the Tanzania Court of Appeal Rules of 2019**. The application was supported with an affidavit of the applicant. When the application was due for hearing, all the parties were present in person. The learned advocate, Mr. Joseph Bitakwate appeared for the applicant whereas the learned advocate, Mr. Victor Blasio appeared for the respondent. The counsel for the applicant argued that there are three important points that the applicant wishes to advance to the Court of Appeal of Tanzania in case the leave is granted. **First**, there was contradiction between the evidence of DW3 (Joseph Mabati) and that of Kassim Athuman



Kajwangya. **Second**, he argued that, this court erred on relying on exhibit D1 which contravened the law. **Third**, the respondent failed to tender written evidence on the transfer of title from Alex Mabati to his wife called Alphoncina Kikotaliza Mabati. He supported his submission with the case of **Jireys Nestory Mutalemwa v. Ngorongoro Conservation Area Authority, Civil Application No. 154 of 2016**, CAT at Arusha (unreported).

On the other hand, the counsel for the respondent resisted the application arguing that, there must be an arguable issue for the leave to appeal to the Court of Appeal of Tanzania to be granted. He supported his argument with the case of **Safari Mwazembe v. Juma Fundisha, Civil Application No. 503/06 of 2021**, CAT at Mbeya (unreported). In his view, the application lacked merit because all the issues raised by the counsel the for the applicant were resolved by this court at an appellate level. He further argued that, there was no contradiction in the evidence adduced and the respondent proved how she got title over the disputed land.

When rejoining, there was no substantial argument rather than reiterating the points argued in the submission in chief.



In granting leave to appeal to the Court of Appeal of Tanzania, this court must see if there is any point of law worth being considered by the Honourable Court of Appeal. See, the case of **Hamad Omari v. Yusufu Issa, Civil Application No. 2 of 2007**. Also, leave to appeal to the Court of Appeal is not an automatic right rather it is the discretion exercised by this court upon finding that there is an arguable issue(s) in case the leave is granted. In the case of **Jireys** (*supra*), the Court of Appeal observed that:

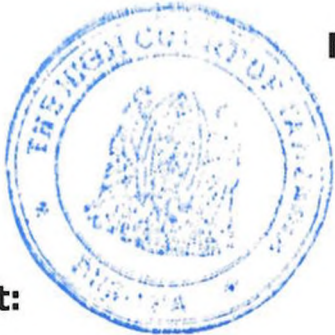
'The duty of the Court at this stage is to confine itself to the determination of whether the proposed grounds raise an arguable issue(s) before the Court in the event leave is granted. It is for this reason the Court brushed away the requirement to show that the appeal stands better chances of success as a fact to be considered for the grant of leave to appeal.'

In the case of **Rutagatina C.L. v. The Advocates Committee and Another, Civil Application No. 98 of 2010** (unreported) the Court of Appeal of Tanzania insisted 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 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 a novel point of law or where the grounds show prima facie or arguable appeal (see: Buckle v. Holmes (1926) ALL ER 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted.'

In the case at hand, based on the principles of the law stated above, there is nothing of public importance nor point of law to bother the Honourable Court of Appeal. I find the application devoid of merit and hereby dismiss it with costs. Order accordingly.

Dated at Bukoba this 15th Day of August 2022.




Ntemi N. Kilekamajenga
JUDGE
15/08/2020

Court:

Ruling delivered this 15th August 2022 in the presence of all the parties and the counsel for the applicant, Mr. Joseph Bitakwate who was also holding brief for the counsel for the respondent, Mr. Victor Blasio.




Ntemi N. Kilekamajenga
JUDGE
15/08/2020

