

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

MISC. LAND CASE APPLICATION NO. 66 OF 2020

(C/F Land Appeal No. 116 of 2016 at Babati District Land and Housing Tribunal for Manyara, C/F Ward
Tribunal Application No. 02 of 2016)

IMMACULATA MWINUKA..... APPLICANT

VERSUS

KWATHEMATI MUNA.....RESPONDENT

RULING

18/2/2022 & 31/8/2022

ROBERT, J:-

The applicant, Immaculata Mwinuka, seek to be granted leave to file an appeal to the Court of Appeal of Tanzania and this Court to certify that there is a point of law for determination by the Court of Appeal of Tanzania against the judgment and decree of this court dated 07/08/2020 in Land Appeal No. 43 of 2018. The application is supported by an affidavit sworn by Mr. Aggrey Cosmas Kamazima, the learned counsel for the applicant.

The affidavit in support of this application raised the following issues through which the applicant intends to challenge the impugned decision of this Court:

- i. Whether the High Court of Tanzania at Arusha rightly applied the doctrine of adverse possession in giving judgment in favour of the respondent.*
- ii. Whether the respondent in the High Court did prove a clean and a good title to the suit land.*

The respondent opposed the application through a dully sworn counter affidavit in which he contested all the issues raised by the applicant.

When the application came up for hearing on 06/09/2021, Mr. Abdallah Ally, learned counsel holding brief for the applicant's counsel, made a prayer to argue the application by way of written submissions which was not opposed by the respondent. The prayer was thus granted and a schedule was given according to which parties were required to file their respective submissions.

In his submissions, Mr. Aggrey C. Kamazima, learned counsel for the applicant submitted that this Court has discretion in granting leave for the applicant to appeal to the Court of Appeal upon the applicant's showing that there is a prima facie or arguable points of law worthy of consideration by the Court of Appeal. To support his argument, he cited the case of **British Broadcasting Corporation vs Eric Sikuja Ng'maryo**, Civil Application No. 138 of 2004 CAT-DSM where the Court

of Appeal stated that it is within the discretion of the High Court to grant or not to grant leave to appeal to the Court of Appeal and further that in granting leave the High Court considers whether the grounds raised in the intended appeal raise issues of general importance or a novel point of law or a prima facie or arguable appeal.

To demonstrate that the intended appeal raises a prima facie or arguable appeal he expounded on each of the two intended grounds of appeal in turn. On the first ground, he faulted the High Court for relying on the principle of adverse possession in its decision based on the date of the contract of the alleged sale of land only without proof of actual possession. He maintained further that, the applicant did not abandon the disputed land but was ordered not to develop such land until a dispute on the demarcation of the area is resolved.

On the second ground, he argued that, the purported sale of the disputed land by the respondent was not valid and the alleged sale was not approved by the village council as required by section 142 (1) of the Local Government (District Authorities) Act, Cap. 287 (R.E.2019) and was not witnessed by the neighbours to avoid any future disputes.

Having submitted in detail on the intended grounds of appeal, he was of the firm view that a prima facie case had been made requiring

attention of the Court of Appeal and prayed that the application for leave as well as a certificate on a point of law be granted as prayed.

In a brief reply, the respondent through his advocate, Mr. Tadey Lister, maintained that there is no any point of law which requires intervention of the Court of Appeal. He therefore prayed for the application to be dismissed with costs.

In rejoinder submissions, counsel for the applicant argued that the point of law raised meets the requirements needed to warrant consideration by the Court of Appeal. He reiterated most of what was submitted in chief and concluded by stating that he maintains his position that there exists a point of law which requires guidance of the Court of Appeal. He prayed that the application be granted.

From the affidavits filed and submissions made, the question for determination is whether or not sufficient cause has been shown for this court to exercise its discretion to grant the application. Normally, in applications of this nature, in establishing whether or not sufficient cause has been shown, the Court considers mainly whether the applicant has raised a point of law that is worthy of consideration by the Court of Appeal.

This application is preferred under section 47 (2) and (3) of the Land Disputes Courts Act [Cap 216 RE 2019] which provide as hereunder;

"47-(2) A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may, with leave of the High Court or Court of Appeal, appeal to the Court of Appeal.

(3) Where an appeal to the Court of Appeal originates from the Ward Tribunal, the appellant shall be required to seek for the Certificate from the High Court certifying that there is point of law involved in the appeal"

From the cited provision, an appeal from the High Court to the Court of Appeal for matters originating from the Ward Tribunal may be filed to the High Court with leave of the High Court or Court of Appeal upon certification by the High Court that there is a point of law involved in the intended appeal.

The power to grant leave is discretionary and has to be exercised only where the court is satisfied that there is a point of law involved which require serious judicial consideration by the Court of Appeal (See **Sango Bay Estate Ltd & Others vs Dresdner Bank** (1971) EA 17, **Hamisi Mdida & Another vs The Registered Trustees of Islamic Foundation**, Civil Appeal No. 232 of 2008, CAT-Tabora (unreported).

Looking at the affidavit and submissions filed in support of this application, the applicant raised two points as mentioned herein above,

through which he intends to challenge the impugned decision of this Court.

This court will consider whether or not the points raised by the applicant presents any arguable issues which requires consideration by the Court of Appeal. Without going into the merits of the proposed issues, the gist of the first point of law as contained in the applicant's application intends to challenge the applicability of the doctrine of adverse possession in the absence of proof of actual possession. Similarly, the second ground seeks to establish whether or not the respondent proved to have a clean and good title to the suit land while the alleged sale of land was not approved by the village council and was not witnessed by the neighbours.

This Court considers that this matter, including the points raised by the applicant, have been well tackled by this Court, and is not convinced that the issues raised by the applicant involve points of law which require serious judicial consideration by the Court of Appeal. The first point, though raised as a point of law, is mainly centred on proof of facts, that is, whether the respondent was in actual possession of the disputed property in order for the principle of adverse possession to be applicable.

Similarly, the second point seek to find out whether the alleged sale was approved by the village council and witnessed by the neighbours

which are not points of law that require serious judicial consideration by the Court of Appeal. That said, this Court finds no merit in this application and dismisses it accordingly.

It is so ordered.



A handwritten signature in black ink, appearing to read "K.N. Robert", is written above the printed name.

K.N.ROBERT
JUDGE
31/8/2022

