

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA**

MISC. LAND APPLICATION NO. 93 OF 2020

**KAMAL YUSUFU ALLY YUSUFU
SHARIFA ALLY YUSUPH MPORE
NARGIS ALLY YUSUFU MPORE**

**(Suing as Co- administrators of the estate
of the late Yusuf Mpire**

} **APPLICANTS**

VERSUS

**IBRAHIM ALLY MPORE
BARBIR SING SAINI**

} **RESPONDENTS**

**(Arising from the Ruling of the High Court Tanzania at Dodoma-Masaju J.)
Dated 10th day of October, 2020**

**In
Land Case No. 08 of 2019**

RULING

1stAugust&9thSeptember,2022

MDEMU, J:.

This is an application for leave to appeal to the Court of Appeal brought under provisions of section 47(1) of Land Disputes Courts Act, Cap. 216 and section 5(1) (c) and (2)(b) of the Appellate Jurisdiction Act, Cap. 141 (the AJA) and Rule 45(a) of the Court of Appeal Rules, 2009. The application is

supported by affidavit deposed by Mr. Mashaka Ngole, learned Advocate for all the Applicants.

According to the affidavit in support of the application, the Applicants intends to challenge the decision of this Court (Masaju, J.) dated the 9th of October, 2022 which did strike out Land Case No. 8 of 2019 as the Applicants herein had no *locus standi*. Leave as per paragraph 7 of the affidavit, is premised on the following grounds:

- 1. That, the trial judge erred for entertaining an objection which has been improperly and unlawfully brought before the court.*
- 2. That, the trial judge erred in law for arriving into the findings that the Applicants including the co-adminstratrix of the estates of the late Ally Yusuph Mpore have no "locus standi" to sue for the property of the late Ally Yusuph Mpore.*
- 3. That, the trial judge erred in law and facts for entertaining a point of facts which is disputable and erroneously struck out the suit.*

This application came for hearing on 25th of July, 2022 in which Sabri Salehe, learned Advocate appeared for the Applicants whereas Mr. Semu, learned Advocate, represented the Respondents. It was agreed to determine the application by way of written submissions. The Applicants' Advocate filed his written submissions on the 2nd of August, 2022. As appears in the order dated 25th of July, 2022, the Respondents' counsel did not intend to file written submissions because of not resisting the application.

Briefly, in the written submissions, the Applicants' Advocate submitted that the decision of this court is appealable to the Court of Appeal in terms of section 47(1) of Cap.216 and section 5(1) (c) of the AJA, Cap.141 upon leave of this Court. He cited the case of **Yahaya Rajabu vs. Ibrahim Salum Tahfif and Ahmed Salum Yahfif, Land Case No.4 of 2009** and that of **British Broadcasting Corporation vs. Eric Sikujua Ng'imaryo, Civil Application No. 138 of 2004** (both unreported) elaborating that, leave is grantable where grounds of appeal raise issues of general importance, novel point of law or where the premised grounds show a prima facie arguable appeal.

I have given critical consideration of this submissions and the entire affidavit in support of the application. Are the grounds raised in paragraph 7

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of the affidavit contain issues of general importance or comprises novel point(s) of law or in their face value, is there any arguable appeal to the Court of Appeal?

Beginning with the ground relating to entertaining an objection improperly and unlawfully brought before this Court, I have not seen any substance in this ground meriting for determination by the Court of Appeal. In the impugned decision, this Court allowed, and did entertain a preliminary objection raised orally. The Applicants' Counsel did not clarify this ground in his written submissions. If he meant that the objection has to be by way of written notice, I know of no law providing such restrictions. If there is any, then, the irregularity is curable because the Applicants had an opportunity to submit on the raised preliminary objection regarding *locus standi*. There is nothing in ground 7(a) suggesting arguable appeal, novel point of law or issues of general importance.

In ground 7(b) and (c), the Applicants' complaint hinges on *locus standi*. The gist of the complaint is that, this Court wrongly struck out Land Case No. 8 of 2019 such that, all the three Applicants, none had a *locus standi*. In his written submissions, the Applicants' counsel was of the view that as other Applicants have interests in the estate of the late Ally Yusuph

Mpore, then it may not be possible that all lacks *locus standi* as observed by this Court. This one is arguable. There is also legal issue meriting the interference of the Court Appeal.

On that stance, this application is allowed to the extent as discussed above. Each party to bear own costs.

Order accordingly.



Gerson J. Mdemu
JUDGE
09/09/2022

DATED at DODOMA this 09th day of September, 2022



Gerson J. Mdemu
JUDGE
09/09/2022