

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA

MISC. LAND APPLICATION NO.69 OF 2021

*(Arising from the High Court of Tanzania at Dodoma
in Land Appeal No. 9 of 2019)*

COSMAS ANTON ITUNGULU..... APPLICANT

(as Administrator of the Estate of Late MTINANGI ITUNGULU)

Versus

TIMOTH M. IRUNDE..... RESPONDENT

RULING

Date of last Order: 28/07/2022

Date of Ruling:18/08/2022

Mambi, J.

The applicant filed his application for leave to appeal to the Court of Appeal. The applicants filed a chamber summons under Section 47(2) of the Land Disputes Courts Act, Cap 216 [R.E 2019] supported by his affidavit. The applicant prays to this court to grant leave to enable him to appeal to the Court of Appeal against the decision made by this Court.

During hearing, the applicant appeared under the services of Mr. Elias Subi while the respondent appeared under the services of Ms. Amina.

The applicant through his learned Counsel briefly submitted that he prays to adopt his affidavit which contains point of law for his application especially under paragraph 5.

In response, the respondent counsel contended the application arguing that the application lacks merit for as the affidavit contain no points of law which need to be addressed by the Court of Appeal.

I have keenly perused the documents and considered briefly the submissions made by both parties including an affidavit filed by the applicant. The main issues in my considered view is, whether the applicant has advanced clear points of law and grounds to warrant this court to grant leave to appeal to the court of Appeal. In other words, this Court needs to determine as to whether there are points of law that has been raised by the applicant to enable this Court to grant leave for him to appeal to the Court of Appeal. It is the settled position of the law that for the court to consider an application for leave to appeal to the Court of Appeal, there must be point/s of law to be determined. It is also trite law that grant of leave or certificate to appeal to the Court of Appeal is a discretionary power of the court.

The law on this point is very clear on what should the court consider before granting leave or certificate to appeal to the Court of Appeal of Tanzania against the judgment and orders given by this Court as I alluded above. It is clear that the decision which is intended to be appealed was

made by this Court. However, before the High Court grants certificate or leave to appeal to the Court of Appeal the applicant must clearly show the points of laws that were not determined by the judge who made the decision against him.

The requirement for showing point/points of law for any party who seeks leave from the High Court to appeal to the Court of Appeal is provided under the Appellate Jurisdiction Act, Cap 141 [R.E.2019]. This is under the section 5 (2) (c) of the Appellate Jurisdiction Act, Cap 141 [R.E.2002] which provides that:

*"no appeal shall lie against any decision or order of the High Court in any proceedings unless the High Court certifies that a **point of law** is involved in the decision or order"*

The question is, did the applicant indicate any point of law as required by the law.? I have perused the affidavit by the applicant and observed that he has points of law that needs to be determined by the Court of Appeal. This court has in numerous decisions held that certificate or leave to appeal to the Court of Appeal can only be granted where the applicant has clearly pointed out the points of law in his affidavit. I am also aware that leave to appeal is not automatic rather it is discretionary. Looking at the joint affidavit by the applicants especially para 5, I find that the applicant has established that there are points of law that need to be determined by the Court of Appeal.

In light of what I have observed and reasoned, I find it proper the applicant to be granted leave to appeal to the Court of Appeal as prayed. In the result, I grant the application as prayed. The applicant shall file his appeal to the Court of Appeal within the time prescribed by the law from this date. I make no orders as to costs. It is so ordered.



A. J. MAMBI

JUDGE

18/08/2022

Ruling delivered in Chambers this 18th day of August 2022 in presence of both parties.



A. J. MAMBI

JUDGE

18/08/2022

Right of appeal explained.



A. J. MAMBI

JUDGE

18/08/2022