

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

AT BUKOBA

MISC. LAND APPLICATION NO. 148 OF 2021

*(Arising from High Court of Tanzania in Land Appeal No. 70/2020, Original Land Application No. 145/2017
of Bukoba District Land and Housing Tribunal)*

JOFREY RWEBANGIRA.....1ST APPLICANT
MASHTWA ZUBAILI RUSHEKE.....2ND APPLICANT
DAUDA SADICK.....3RD APPLICANT
DAVID KABANDA KAMALA.....4TH APPLICANT
GERASE YUSTINE.....5TH APPLICANT
ONESTA JOFREY.....6TH APPLICANT

VERSUS

CRESENSIA MWOMBEKI..... RESPONDENT

RULING

Date of Ruling: 19.08.2022

A. Y. Mwenda, J

In this application, the Applicants are praying for leave to appeal to the court of appeal of Tanzania to challenge the decision of this court delivered on 11th day to October 2021 in Land Appeal No. 70 of 2020.

This application is supported by affidavit sworn by Pauline Michael, the Applicant's advocate. The intended appeal is captured in paragraph 4.0 of his affidavit where he deponed as follows;

4.0. That the Applicant (sic) intended (sic) to appeal to the Court of Appeal of Tanzania as there is contentious matter fit for consideration by the Court of Appeal and the proceedings as a whole reveal such disturbing features as to require the guidance of the Court of Appeal hence leave to appeal to the Court of Appeal is sought on the following grounds to wit:

i. That the Courts below granted to the respondent a 2x54 feet piece of land which are nowhere to be found in the proceedings but fabricated from air.

ii. That after the courts admitting that the respondent instituted the case while not yet in possession of the land in dispute it erred in law to proceed deciding the case in favor of the respondent.

iii. That after expunge of documents from the court record on further evidence sufficient to warrant ownership of the land in dispute to the respondent. (sic)

iv. That both the judgments of the courts below are supporting the wrong facts which is the base of trial judgment but are not even found in the court proceedings. (sic)

Contesting the present application, the respondent's advocate swore a counter affidavit. When this matter was called for hearing, the applicants were represented by Mr. Pauline, learned counsel and the respondent was represented by Mr. Kalori

learned counsel. Before the court, it was agreed by the parties to dispose this matter by way of written submissions and both complied to the scheduling orders.

In his written submission in support to the applicant's application, Mr. Pauline Michael, begun with a prayer for this court to adopt his affidavit accompanied with its annextures in order to form part to his written submission. The learned counsel further submitted that the four grounds raise issues of general importance arguable before the court of Appeal. One example which he took is the 1st ground of appeal which challenges measurements of the piece of land which was granted to the respondent while the same is not found in the proceedings. To him this alone makes the intended appeal stand a reasonable chances of success. To support this point he cited the case of *HARBAN HAJI MOSI AND ANOTHER VS. OMAR HILAJ SEIF AND ANOTHER*, CIVIL REFERENCE NO. 19 OF 1997 (unreported). He thus concluded his written submission beseeching this court to grant leave to appeal to the court of appeal.

In reply, Mr. Frank Kalori John submitted that the counsel for the applicants failed to hazard any point to be tabled before the court of Appeal. He said the issue of measurements of the piece of land was well discussed when the respondent was giving her evidence before the trial tribunal and this court dealt with it at page 12 of the judgment. The learned counsel submitted that concurrent findings of lower courts cannot be interfered by the 2nd appellate court unless there is miscarriage

of justice. To support this point, he cited the case of HELMINA NYONI VS. YEREMIA MAGOTI, CIVIL APPEAL NO. 61 OF 2020 CAT (unreported). He concluded his submission with a prayer to have the present application dismissed with costs.

I have keenly analyzed the rival submission and the records. To start with, it is pertinent to note that, leave to appeal is not automatic. In the case of BBC VS. ERIC SIKUJUA NG'MARYO, CIVIL APPLICATION NO. 138 OF 2004, CAT the court held;

"Needless to say, I leave to appeal is not automatic. It is within the discretion of the court to grant or refuse leave. The discretion must, however judiciously be 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..."

In the same case, the court while citing the case of HANBAN HAJI MOSI (ii) SHAURI HAJI MOSI VS. OMAR HILAL SEIF (ii) SEIF OMAR (unreported) held;

"Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not

necessarily, the proceedings as a whole reveal such disturbing features as to require the guidance of the court of appeal. The purpose of the provision is therefore to spare the court the specter of un meriting matters and to enable it to give adequate attention to cases of true public importance."

In the present application, the proposed grounds are points of facts which were dealt with before the trial tribunal and the first appellate court (this court). Since the intended appeal to the court of appeal is the second one, then as was rightly pointed out by Mr. Frank Kalori John the same do not stand chances of success as the Court of Appeal, being the second appellate court, cannot interfere the concurrent findings of two courts below.

Since what is stated at paragraph 4.0 of the applicants' affidavit are purely matters of facts which were deliberated by the lower courts, this court finds this application is devoid of merits and it is hereby dismissed with costs.

It is so ordered.




A.Y. Mwenda

Judge

19.08.2022

Ruling delivered in chamber under the seal of this court in the presence of 1st Applicant Mr. Jofrey Rwebangira and in the absence of the 2nd, 3rd, 4th, 5th and 6th Applicants and in the absence of the Respondent.




A.Y. Mwenda

Judge

19.08.2022