

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

**AT BUKOBA**

**MISC. LAND APPLICATION NO. 50 OF 2022**

*(Arising from the High Court of Tanzania (Bukoba Registry) in Land Appeal No. 85 of 2020 Original Land Application No. 172 of 2015 from the District Land and Housing Tribunal for Bukoba at Kagera)*

**LEOPARD KYARUZI.....APPLICANT**

**VERSUS**

**MKURUGENZI BUKOBA MUNICIPAL .....1<sup>ST</sup> RESPONDENT**

**KELEZENSIA ALEXANDER .....2<sup>ND</sup> RESPONDENT**

**SPIRASIA THADEO .....3<sup>RD</sup> RESPONDENT**

**RULING**

*Date of Ruling: 02.09.2022*

*A.Y. Mwenda, J.*

This is an application for leave to appeal to the Court of appeal brought under **section 47(2) of the Land Disputes Court's Act [CAP 216 R.E 2019], section 5 of the Appellate Jurisdiction Act [Cap 141 R.E.2019]** read together with Rule 47 and 45 of the **Tanzania Court of Appeal Rules GN 344 OF 2019**. It is supported by an affidavit sworn by the applicant. In counter thereof, the respondent filed a counter affidavit which was sworn by Athumani Msosole, Learned State Attorney for the 1<sup>st</sup> Respondent.

When this matter was scheduled for hearing the Applicant prayed this application to be disposed by the way of written submissions in which the 1<sup>st</sup> respondent did not object and the parties complied with the scheduling order.

In his written submissions the applicant prayed his chamber summons and affidavit to be adopted to form part of his submissions. He submitted that before the District Land and Housing Tribunal he sued the respondent for trespass to land and at the end the tribunal declared the 2<sup>nd</sup> respondent as the rightful owner of the Suit Land. Aggrieved by the said decision he appealed to this court and this Court upheld the decision of the trial tribunal.

He submitted that at the trial tribunal the judgment was delivered without taking into account the assessors opinion. He submitted that this is the reason why he seeks leave to appeal to the Court of Appeal because there is point of law worth to be determined. He further submitted that the tribunal did not disclose the value and the size of the disputed land hence it lacked jurisdiction. To support his argument, he cited the case of ALEXANDER MASHAURI VS SALA SAMWEL, MISC. LAND APPEAL NO. 76 OF 2021.

The applicant further submitted that he made improvements on the land in dispute by planting pine tree which by now are 30 years old. He submitted that the tribunal erred by declaring the 2<sup>nd</sup> respondent as the rightful owner of the suit land while there is no clear evidence on how she acquired the said land. He said that he occupied the said land for over 30 years now and as such the

respondent was already time barred to institute any claim over the said land. He then prayed this application to allowed.

In reply to the submission by the applicant, Mr. Msosole the learned state attorney for the 2<sup>nd</sup> respondent informed the court that he is opposing this application. With regard to the applicant's submission the trial tribunal's jurisdiction based on section 15 of Land Dispute Court's CAP 216 R.E 2019 he said that the said section deals with the jurisdiction of the ward Tribunal and not the District Land and Housing Tribunal. For that matter, he said the applicant misdirected the court and this ground has no merit.

On failure to disclose the size and value of the Suit Land the learned state attorney submitted that the trial tribunal had already determine this issue as stated at page 8 of the typed judgment and therefore it is not a point of law worthy for consideration.

He further submitted that in order for an application for leave to succeed the applicant must demonstrate contentious issues worth to be discussed by the Court of Appeal in which the applicant did not. To support his argument, he cited the case of ERASTO DAIMA SANGA VS PETER MWONGA, MISC. LAND APPLICATION NO.66 OF 2019 HIGH COURT OF TANZANIA AT MBEYA.

On the improvements made by the applicant by planting pine trees which are 30 years old, the learned state attorney submitted that this is not a point of law as it is matter of fact which is not sufficient reason to grant leave to appeal to

the Court of Appeal. In support thereof, he cited the case of MARKUS KINDOLE VS BURTON MDINDE CIVIL APPLICATION NO. 137 OF 2020 (CAT) (unreported)

He concluded his submission by stating that (before the trial court and at the appellate court) the applicant failed to prove ownership and therefore this application should not be granted as there is no point of law worth to be determined by the Court of Appeal.

Having examined the submissions from both sides the issue is whether this application is meritorious.

It is the trite law that in an application for leave to appeal all that the Applicant has to show is that there is an arguable issues worth taking to the Court of Appeal.

In applications such as the present one, the Applicant can marshal out points of law facts or both. What matters is for the Applicant to demonstrate that there is an arguable case worth taking to the Court of Appeal.

In the present application the applicant raised the issue of assessors' opinion as an illegality as the reasons he is applying for leave to appeal to the Court of Appeal. He submitted that before the District Land and Housing Tribunal assessor's opinion were not considered.

This court went through the trial tribunal's records and found out that at page 13 of the typed proceedings, i.e. during the hearing of the applicant's case, the Hon. Chairman sat with assessors one Mpanju and Mugaya who had opportunity

to ask questions to the witnesses. However, during the defense hearing the Hon Chairman did not sit with assessors and there is no reasons advanced as to why they were not involved. Apart from that, the judgment was then pronounced without assessors' opinion and this was in violation of section 23 (1) and (2) of the Land Dispute Court's Act CAP 216 R.E 2019.

On the other hand, Mr. Msosole the learned State Attorney opposed the application on the ground that no sufficient reasons have been disclosed to justify grant of leave. In his written submission, the learned State Attorney submitted that the application does not demonstrate any point of law worth taking to the Court of Appeal. With respect that is not the case as the issue of involvement of assessors is one of the points of law, though as I have pointed earlier in applications such as the present one.

The applicant may demonstrate points of law, fact or both. That being said this application is hereby allowed and leave to appeal is therefore granted.

Order accordingly.



  
A.Y. Mwenda

**Judge**

02.09.2022

This Ruling is delivered in chamber under the seal of this court in the presence of Mr. Athumani Msosole learned State Attorney for the 1<sup>st</sup> respondent and Ms.

Kelezensia Alexander the 2<sup>nd</sup> respondent and in the presence of the Applicant  
Mr. Leopard Kyaruzi.



A.Y. Mwendu

**Judge**

02.09.2022