

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISCELLANEOUS LAND APPLICATION NO. 102 OF 2021

**(Arising from the decision of this Court in Land Appeal No. 21 of 2021,
Kahyoza, J.)**

BETWEEN

BULIMA JACOB KAHUNGWA APPLICANT

VERSUS

BHOKE MGAYA 1ST RESPONDENT

RAYMOND IKULA 2ND RESPONDENT

RULING

A.A. MBAGWA, J.

This is an application for leave to appeal to the Court of Appeal of Tanzania against the decision of this court (Kahyoza, J.) in Land Appeal No. 21 of 2021 delivered on 1st November, 2021. The application is made under section 5 (1) (c) of the Appellate Jurisdiction Act [Cap 141 R.E 2019], Rule 45 (a) of the Court of Appeal Rules of 2009 and Section 47 (2) of the Land Disputes Courts Act [Cap 216 R.E 2019] and it is accompanied by an affidavit deposed by the applicant. On the other hand, the respondents filed a joint counter affidavit to contest the application.

Briefly, the facts obtaining in this matter maybe told as follows; The applicant successfully instituted a suit against the respondents before the

District Land and Housing Tribunal for Mara at Musoma in Land Application No. 164 of 2016. He claimed that the respondents trespassed on his land. In the end, the trial District Land and Housing Tribunal entered judgment in favour of the applicant. The respondents were not amused by the findings of the trial Tribunal hence appealed to this court in Land Appeal No. 21 of 2021 in which the court, in its decision delivered on 1st November 2021 by Kahyoza, J., allowed the appeal and overturned the decision of the trial Tribunal. The court held that the applicant did not prove on the balance of probability that the respondents are trespassers. The applicant was dissatisfied with the decision of this court hence he is determined to challenge it in the Court of Appeal. As such, the applicant filed this application to seek leave to appeal as a pre-condition requirement for appeal before the Court of Appeal.

On the hearing day, the applicant was represented by Venance Kibulika, the learned advocate whilst the respondents fended for themselves.

In his submission, Mr. Kibulika adopted the applicant's affidavit and further argued that the ground intended to be determined in the intended appeal is whether the applicant failed to establish that the respondents are trespassers on the applicant's land. He submitted that the applicant still maintains and believes that the disputed land belongs to him.

The counsel proceeded further that; the High Court held that the applicant has exclusive mining rights over the disputed land but did not state as to where those rights are exercised. Referring to the case of **Tluway Lesi vs Lazaro Mathayo Badada**, Misc. Land Application No. 100 of 2018 HC Arusha, Mr. Kibulika expounded that leave may be granted where the proceedings reveal a disturbing feature as to require the guidance of the Court of Appeal. He concluded by beseeching this court to find the application meritorious and consequently grant the leave.

In reply, the respondents, being the laypersons, had nothing substantial to add to their depositions.

Having heard the submissions for and against the application and upon appraising the depositions filed by the parties, the main issue for the determination in the application for leave to appeal is whether the intended grounds raise arguable issues of law and or facts worth of determination by the Court of Appeal. See **Bulyanhulu Mine Limited and 2 others vs Petrolube (T) Limited and another, Civil Appeal No.364/16 of 2017, CAT at Dar es Salaam** and **Grupp vs Jangwani Sea Breeze Lodge Ltd**, Commercial Case No. 93 of 2002.

From the depositions and submissions of parties as indicated above, it is apparent that there are arguable issues of both law and facts which

require consideration of the Court of Appeal. The issues include; one, whether the applicant did not prove on the balance of probability that the respondents are trespassers to the disputed land and two, whether the first respondent proved that she had surface right over the disputed land.

In consideration of the above, I am of the firm view that the applicant's grounds raise arguable issues of both facts and law which deserve consideration of the Court of Appeal. That said and done, I hereby grant the applicant leave to appeal to the Court of Appeal. Each party should bear its own costs.

It is so ordered.

Right of appeal is explained.




A.A Mbagwa
JUDGE
27/09/2022

Court: Ruling has been delivered in the presence of both respondents and in absence of the applicant this 27th day of September, 2022.


A.A. Mbagwa
JUDGE
27/09/2022