

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[IN THE DISTRICT REGISTRY OF ARUSHA]

AT ARUSHA

MISC LAND APPLICATION NO. 104 OF 2022

(C/F Land Appeal No. 25 of 2020 before the High Court, District Registry of Arusha at Arusha originating from Land Application No. 31 of 2017 from the District Land and Housing Tribunal for Karatu at Karatu)

PETRO META SLAA.....APPLICANT

VERSUS

JOHN EMANUEL GADIE.....RESPONDENT

RULING

27 & 28 September, 2022

KOMBA, J

Petro Meta Slaa, the appellant herein was the unsuccessful party in the District Land and Housing Tribunal (the DLHT) in Land Application No. 31 of 2017 where he sued the respondent claiming ownership over a piece of unsurvey land measuring two (2) acres (disputed land) situated at Mangola village, Karatu District in Arusha. The appeal to the High (C/F Land Appeal No. 25 of 2020 before the High Court, District Registry of Arusha at Arusha originating from Land Application No. 31 of 2017 from the District Land and Housing Tribunal for Karatu at Karatu) was decided in favour of respondent to this appeal. Being aggrieved for the second time he is knocking the door of the Court of Appeal through this Application.

Summary of the applicant case goes as follows; he was allocated the disputed land by village council way back 1974 during Operation *Vijiji*. For the whole time he was using the disputed land until 2016 when the respondent invaded the suit premise and the legal process began. The DLHT decided in favor of the respondent on the ground that respondent has been in occupation and possession of the said suit premise for seventeen years (17) until 2009 when the appellant file application. The Respondent was declared lawful owner and the applicant lodge an appeal to this court with four grounds.

The court discussed all grounds together, that burden of proof to his allegation that he owns the disputed land lied on the applicant and he failed to do so. On the other hand, it was the position of the respondent that the suit premise was part of his fathers' land were owned it long time and he (father) surrendered part of it to Government authority but not the disputed land. It was revealed that the appellant did cut tree(s) in the disputed land hence cause destruction, the fact which was evidenced by exhibit D1 which was admitted by the DLHT. It was further explained by four witnesses that applicant once seek for a permission and allowed by the respondent temporarily to use the land when he had social engagement. The area which

appellant allowed to use was locally fenced and that was not within the disputed land which was subject of this appeal. The appellant failed to present sufficient evidence to establish ownership of the disputed land. Since the respondent is in the possession of the disputed land which appellant allege, he trespassed into, the burden of proof, according to law, lied to applicant and he failed. The doctrine of estoppel was used to arrive into the conclusion that so far as the appellant admitted in writing that he once did destruction to the disputed land he cannot be allowed to deny what he admitted.

Leave to appeal to the Court of Appeal is a mandatory step to be undertaken by any party who wants to challenge decisions from this court on land matters when exercising the appellate jurisdiction. Section 47 (2) of the Land Disputes Court Act Cap. 216 imposes a condition that to appeal to the Court of Appeal of Tanzania, the aggrieved party must seek for leave.

'S. 47.-(1)

(2) A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may, with leave of the High Court or Court of Appeal, appeal to the Court of Appeal.'

Appellant in his chamber application which was supported by sworn affidavit of Petro Meta Slaa had two grounds of appeal which are found in paragraph 4 and 6 to wit;

'(4)Decision of the trial being in the result of improper analysis of evidence adduced and documents tendered. That the High court being the first appellate court misapprehended the facts on record in holding that the applicant is estopped to deny his admission exhibit D1.

(6) In ground two of appeal the appellant was challenging the conclusion made by the trial tribunal during locus in quo. The high court in its judgement upheld the observation by the trial tribunal without considering that the trial tribunal violated guideline pertinent to locus in quo.

There is no counter affidavit in record.

In considering whether to grant the leave sought or not, I warned myself on the danger which has been addressed by their Lordships Justices of Appeal in various decisions of the Court in giving jurisprudential guidance in determining applications for leave to appeal. The said danger is the likelihood of going to the substantive part of the issues in the intended appeal. See case of The **Regional Manager-TANROADS Lindi vs DB Shapriya and Company Ltd**, Civil Application No. 29 of 2012 CA (unreported)

The duty of the Court at this stage is to confine itself to the determination of whether the proposed grounds raise an arguable issue(s) before the Court in the event leave is granted. The issue now is whether reasons for this application present an arguable issue which can be considered by the Court of Appeal.

When the application was scheduled for hearing, only advocate for the applicant, Bungaya Mpanga appeared while responded did not show up and was marked absent. Being a special session of this Court, the matter proceeded as scheduled.

In oral submission, counsel for the applicant Mr Bungaya while adopting the whole affidavit of Petro Slaa, combined paragraphs 4, 5 and 6 of the affidavit in support of the application and argued that decision of the High court is misapprehension of facts on record in holding that the applicant is estopped to deny his admission in exhibit D1 and indeed the High Court in its judgement relied on content of exhibit D1 in arriving into decision and that the High court relied in summary taken by the tribunal during the *locus quo* while same was taken in violation of guidelines pertinent to the *locus quo*. He said it was the duty of the High Court before arriving to its conclusion to consider propriety of the procedure at *locus quo*.

There are arguable issues which may need to be considered at an appellate level and that I find there is sufficient cause established by the applicant to warrant granting leave to appeal. In this respect, the application for leave to appeal to the Court of Appeal of Tanzania is granted.

Costs to be considered in the intended appeal.


M.L. KOMBA

JUDGE

28/09/2022

Ruling delivered this 28th day of September 2022 in chamber in the presence of Mr. Mpanga, advocate for the Applicant and in the absence of respondent.




M.L. KOMBA

JUDGE

28/09/2022