

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY  
AT MWANZA  
MISC. LAND APPEAL NO. 27 OF 2022  
(Arising from LAND Appeal No. 27/2018)**

**SHABANI HAMAD.....1<sup>ST</sup> APPLICANT**

**JETRUDA JEREMIAH.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**GEITA TOWN COUNCIL.....RESPONDENT**

**RULING**

**Date of Last order 22/9/2022**

**Date of Ruling 03/10/2022**

**R. B. MASSAM, J.**

This application is brought under section 5(1)(c) of Appellate Jurisdiction Act Cap 141 R.E 2019, and Rule 47 of the court of Appeal Rules GN No. 368 of 2009. The applicant sought leave to appeal to the Court of Appeal against the decision of this court delivered on 21<sup>st</sup> February 2020, before Hon. M. M. Siyani J, the applicant's application is supported by an affidavit sworn by Pauline Michael advocate for the applicant. Brief facts go thus at the District Land and Housing Tribunal for Geita, 1<sup>st</sup> respondent successful sued Geita Town council for ownership of a piece of land located at Kivulini street, Nyankumbu village, Geita District. The tribunal declared



the respondent owner of the disputed land and decreed for payment of compensation at a tune of Tshs. 40,000,000/= Tshs. 1,000,000/= annually as from 2008 to the date of judgment as loss of income, and Tshs. 2,000,000/= as compensation for properties destroyed.

Being aggrieved by the said decision, Geita Town council filed an appeal before this court which succeeded and the appeal was allowed by quashing the decision of the District Land and Housing Tribunal Geita and set aside its decree with costs. So, the respondents were not satisfied with the decision and approach this court under section 5(1) (c) of the Appellate Jurisdiction Act chamber summons he prays for the following:

- (1) That the honorable court be pleaded to grant leave to the applicants to appeal to the court of Appeal of Tanzania against the decision and decree in land appeal No. 27 of 2018.
- (2) Costs of this application to be provided for

When the matter was called for hearing applicants were represented by Mr. Pauline Rwechungura advocate and the respondent was represented by Mr. Evance Robi solicitor for Geita Town Council.



Mr. Pauline Rwechungura learned counsel submitted that this application was brought after given extension of time to file leave to the court of Appeal, the order was given on 18/3/2022 before Itemba, J this application was brought under section 5(1) (c) of the appellate Jurisdiction Act Cap. 114 R.E 2019 and Rule 47 of Tanzania Court of Appeal Rules GN. No. 368. Again, he submitted that, his application emanates from land application No. 35/2013 from Geita Land and Housing Tribunal, Land Appeal No. 27 of 2018 and Misc. Land application No. 53/2020. He went on to state that his application was supported by his affidavit together with exhibit number A, B, C and he pray to be adopted and form part of his submission.

He added that in paragraph 4 of his affidavit he attached three reasons as to why he is praying that leave to be granted. The first reason is that the trial Judge erred in law in deciding Land Appeal No. 27 of 2018 by using non-existing law. He submitted that, when the applicant bought the said land in dispute, he used section 31 of village Land Act Cap 114 R.E 2002 and decide that the applicants' sale agreement ought to have been approved by the village council. He averred that 1<sup>st</sup> respondent bought that land in dispute on 19/2/2002, and 2<sup>nd</sup> respondent on 14/6/1997, and the Village Land Act come to force in 2003.



The second reason is that the court gave the respondent the said land without any proof as he never proved that, the said land belongs to him. The third reason is that there was no proof that the said land was owned customarily, as in the court records that facts are nowhere to be seen and no exhibit was shown like title deed to show that the said land was surveyed one, he supported his argument with the case of **Harban Haji Moshi & another vs. Omary Hilal Self**, in Civil Reference No. 19 of 1997 [unreported]. In this case court of Appeal held that leave is granted where the proposed appeal stands reasonable chances of success or where, but not necessarily the proceedings as a whole reveals such disturbing feature as to require the guidance of the court of Appeal. In his opinion, he submitted that he has good reasons to be granted leave.

Opposing the application, Mr. Evance Robi solicitor for the respondent submitted that in the Land and Housing Tribunal there were some errors when PW1 [Simeo Karoli] testified to the court, so he prays this court to disregard his evidence because he testified in his capacity while he was representing others, and the court noted that in pages number 5-6 of the decision of Siyani, J. Also, he submitted that in the judgment of Geita Land





and Housing Tribunal shows that, there were three respondents but in the other documents show that the respondent was only one Geita Town council.

In reply to the issue concerning the use of non- existence law, by the tribunal this court required to see the time when the land dispute arises which is 2008, So it is his opinion that, the trial judge was right to decide what he decided by using that law as it was not nonexistence law.

In replying to the 2<sup>nd</sup> ground of appeal he said that the court gave the respondent the said land which he did not manage to prove the ownership, he replied by saying that the court did not order him to prove as the issue in dispute was whether the applicant was the legal owner of the land in dispute.

Again, in replying to the 3<sup>rd</sup> ground of appeal that there was no proof that, the said land was owned customarily, in the sale agreement which was tendered as exhibit No. 1 for the applicant in Geita District and Housing Tribunal agreement nowhere was shown to prove that, the said land was surveyed, so in the absence of that proof it show that the land was owned customarily. So, he prays this court not to grant leave to appeal to the Court of Appeal.



In his rejoinder, Mr. Pauline Rwechungura advocate for the respondent submitted that the issue of the testimony of PW1 [Simon Karoli] prays the court to disregard it as it was not in the counter affidavit. Again the issue of Geita Town Council to appear alone to the case, while they were three respondents that issue also was not in the counter affidavit so he prays again to be regarded.

Lastly, he said that, he is still insisting that, the law used was non-existence law, and the said case was not proved as per the requirement of section 110 of TEA, which requires that who allege must prove.

I have given careful consideration the argument for and against the application herein advanced by both advocates, affidavit and counter affidavit the central issue to determine is **whether the application has merit.**

In determining an application of this kind, the court has to consider whether the applicant has advanced sufficient reasons to convince the court to grant the application sought, in the side of the applicant informed this court that he has sufficient reasons to be granted leave to appeal to the court of appeal, He said that the law used to give the ownership to the



respondent was non-existence, also he told this court that, the court relied in the weak evidence to give the land to the respondent, and there was no proof that the land was owned customary.

This court is aware that the leave is given where the appeal has chance to succeed. The court of Appeal in the case of **Harban Haji Mosi and another vs. Omari Hilal Seif and another**, Civil Reference No. 19 /1997 CAT, it was held that leave is granted where the proposed appeal stands reasonable chances of success or where but not necessarily the proceedings as a whole reveals such disturbing feature as to require the guidance of the Court of Appeal.

Again, this court is aware that, leave to appeal is not automatic it is within the discretion of the court to grant or refuse and that discretion should be judiciously exercised on the material before the court, see the case of **British Broadcasting Cooperation vs. Erick Sikujua Ngimaryo**, Civil Application No. 138 of 2004 CAT. Even though the applicant tried to convince this court that he has a reason to be granted leave, in the side of the respondent he submitted that he doesn't see sufficient reasons for the applicant to be given leave to appeal, as the trial judge was right to use that




law as it was existing and thus why he decided that applicant sale agreement was required to be approved by the village council.

Lastly, the respondent informed the court that the applicant failed to prove that the said land was not owned customary as he failed to prove that the said land was surveyed one by brought a title deed or any document to prove the same. This court is aware that everyone has a right to be heard and the said right is under the Constitution of the United Republic of Tanzania and that right if denied, the person will be waived his constitutional rights, So it is my considered view that, the three grounds advanced by the applicant in his affidavit and his oral submission supporting the reasons advances therein. It goes without say that the applicant adduced sufficient reasons to grant leave to appeal to the court of appeal. I hereby grant the applicant leave to appeal to the court of appeal within 14 days from the date of this ruling. Each party to bear his/ her own costs.

It is so ordered.

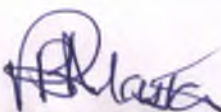
**DATED at MWANZA this 3<sup>rd</sup> October, 2022.**



  
**R.B. MASSAM**  
**JUDGE**  
**03/10/2022**



**Court:** Ruling delivered on 03<sup>rd</sup> October, 2022 in the presence of Pauline Rwechungura advocate for the applicant holding brief for Ms. Godlove for the respondent.



**R.B. MASSAM**  
**JUDGE**  
**03/10/2022**