

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MUSOMA SUB REGISTRY**

**AT MUSOMA**

**MISC. LAND APPLICATION NO 29 OF 2022**

(Arising from Land Appeal No 106 of 2021 High Court of Tanzania Msoma District  
Registry at Musoma AND Originating from Application NO 09 of 2019 of District  
Housing Tribunal for Tarime at Musoma)

**IBRAHIM WAMBURA MAHENDE ..... APPLICANT**

***VERSUS***

**RAYMOND FRANCIS MAGITA ..... RESPONDENT**

**RULING**

12<sup>th</sup> September & 30<sup>th</sup> September, 2022

**F. H. MAHIMBALI, J.**

This court in Land Appeal no 106 of 2021, dismissed the appellant's appeal as lawful owner of the suit land. The dismissal order aggrieved the appellant, thus dully lodged her notice of appeal to the Court of Appeal Tanzania.

Since the appellant intends to appeal to the Court of Appeal, it is the legal requirement pursuant to section 47 (2) of the LDCA that she first seeks and obtains leave of this court. This is now the said

application preferred under section 47 (2) of the LDCA Cap, 216 R. E. 2019.

As to what grounds of appeal are advanced for this court's leave to the CAT, the applicant in her third paragraph of the sworn affidavit in support of the application deposed:

- i) Whether the High Court properly evaluated the applicant's evidence on the ownership of the disputed land.*
- ii) Whether it was proper for the High Court to hold that the procedure for allocating the village land to the applicant was complied with the law.*
- iii) Whether the procedure for visiting the locus in quo was complied for to procure that the applicant has been encroached 30 paces of the respondent land.*

During the hearing of the application, Mr. **Mr. Waikama Christopher** learned advocated represented the applicant whereas the respondent appeared in person.

In support of the application, Mr. Waikama Christopher submitted that this is an application for leave to appeal to CAT against the decision of this court in Land Appeal No 106 of 2021. The application is brought under section 47 (2) of the LCDCA Cap 216 Cap R. E. 2019 and is supported by an affidavit of the applicant in which he prayed that it be adopted to form part of his submission

In the first ground he submitted that this Court failed to evaluate the evidence of the case properly. Making reference to the case of **Ramadhan Mayange vs Adallah Salehe** (1996) TLR 74, which held that where there arise contentious issues of law, it is a fit case for further consideration by the Court of Appeal. He submitted that this is one of the serious issues for CAT's consideration.

In the second ground, his concern is whether it was proper for the High Court to hold that the procedures for allocating the village land to the applicant were not complied with the law. In the decision of this court which is subject of this application (at page 4 - 5 of the judgment), is an arguable issue before the Court of Appeal Tanzania. He said so because it is his contention that the High Court erred in law and now worth arguable before Court of Appeal Tanzania.

In the third ground, the applicant intends to challenge the decision of the High Court on whether, the procedure for visiting the locus in quo was complied with as per law to the extent of 30 paces encroached by the respondent. In the case of **Sakala P. Mswanzali and 3 others vs Ndole Masala (Administratrix of the Estate of the late Masale Sekeli)**, Misc. Land Application No 54 of 2021 at page 2, the Hon trial judge discussed this issue very well, that High court should guard itself

from crossing a thin line of considering the appeal as warned by the CAT itself in **Jireyes Nestory Mutalemwa vs Ngorongoro conservation Africa Authority Court of Appeal Tanzania** , Application No 154 of 2016.

On these grounds, he prayed that this Court to grant leave as per law so that the applicant can challenge his appeal before the Court of Appeal.

On his part, the Respondent (Raymond Francis Magita), just submitted that the High Court ruled properly and he considers there are no any arguable issue before the Court of Appeal Tanzania. He prayed this application not to be considered by the Court as he considered as a mere delay of justice. He further prayed this Court to adopt his counter affidavit to form part of his submission.

It is important to note that at this stage this Court is enjoined to respond that that the duty of this court in applications of this nature is not to determine the merits or demerits of the grounds of appeal raised when seeking leave to appeal. Instead, the court has only to consider whether the proposed issues are embraced in conditions set in the case of **British Broadcasting Corporation vs Eric Sikujua Ng'maryo** Civil Application No. 138 of 2004 (both unreported).

For clarity, I wish to state what the Court of Appeal considered in the case of **Bulyanhulu Gold Mine Ltd and 2 Others Vs. Petrolube (T) Limited and Another**, Civil Application No. 364/16 of 2017, CAT at Dsm (Unreported) at page 14, where it was stated:

*"Another principle which I think is worth consideration is that at this stage the court is not supposed to look at nor make a finding on the merits or demerits of the intended appeal. It is not the duty of this court to examine the details of the proposed issues."*

The foregoing Court's expression accords with the well-established principle of law that in applications of this nature, courts should avoid making decisions on the substantive issues before the appeal itself is heard. That stance was pronounced by the Court in the case of **The Regional Manager-TAN ROADS Lindi vs DR Shanriva and**

the court faced with such an application. This court should confine itself to the determination whether the proposed grounds raise an arguable issue(s) before the Court and leave it for the Court, in the event leave is granted, to determine the merits or otherwise of such proposed issues.

This accounts for the reason why the Court did away with the requirement to consider whether "the appeal stands chances of success on appeal as a ground for granting leave to appeal or extension of time to appeal.[See **Murtaza Mohamed Raza Virani vs Mehboob Hassanali Versi**, Civil application No. 168 of 2014 and **Victoria Real Estate Development Limited vs Tanzania Investment Bank and Three Others**, Civil Application No. 225 of 2014 (both unreported)].

In consideration of the above stand, coming back at this application for consideration, I am of the view that whether these grounds for leave to appeal to Court of Appeal are worth of CAT's determination, is the domain of the Court of Appeal itself. It is not the duty or responsibility of this Court. However, at this stage I am satisfied that the grounds put by the applicant and argued by her learned counsel, have arguable points for the Court of Appeal's determination. Whether they stand chances for appeal's success is not the duty of this Court now.

I accordingly allow the application and hereby grant leave to appeal to the applicant to appeal to the Court of Appeal against the decision of the High Court of Tanzania (Musoma – Sub Registry) in Land Appeal No. 106 of 2021 which is dated 22nd September, 2021. The appeal shall be lodged within sixty (60) days of the delivery of this ruling.

DATED at MUSOMA this 30<sup>th</sup> day of September, 2022.



F. H. Mahimbali

Judge

**Court:** Ruling delivered this 30<sup>th</sup> day of September, 2022 in the presence of respondent, Mr. Christopher Waikama, advocate for the applicant and Mr. Gidion Mugo, RMA.

F. H. Mahimbali

Judge