

**THE HIGH COURT OF TANZANIA
DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

MISC. LAND APPLICATION NO.56 OF 2021

*(Originating from the High Court of **SHINYANGA** in Land Case No.01/2018)*

RICHARD MAJENGAAPPLICANT

VERSUS

MASHIRI MAGESA1ST RESPONDENT

YAHAYA MSANGI.....2ND RESPONDENT

CLEMENT MKUSA.....3RD RESPONDENT

DAVID RADSLAUS.....4TH RESPONDENT

RULING

30th Sept & 6th Oct, 2022

Nongwa, J.

This is an application for leave to appeal to the Court of Appeal on point of law. The application originated from the decision of Hon. Mkwizu, J. In Land Case No.01 of 2018 delivered on 10/12/2021, which was ex-parte against the respondents. In brief, the applicant was the plaintiff in the case No.01 of 2018, his house was broken and he filed the case against those four defendants. He prayed to be compensated from the damages caused by the defendants.

The application has been made under rule 45(a) of the Court of Appeal Rules 2009, section 47(2) of the Land Dispute Courts Act, Cap 216 R.E 2019 and section 5(1) (c) of the Appellate Jurisdiction Act Cap 141 R.E 2002, the applicant prays for orders that the court be pleased to grant

leave to appeal to the court of appeal on the point of law and costs of the application. The application has been supported by an affidavit of Pastory Biyengo.

The background in a nutshell from the records are that the applicant was the plaintiff in Land case no 1 of 2018 where he had sued the respondents for unlawful trespassing on his premises and demolishing his building. The high found that the plaintiff did not prove ownership of the suit premises as ownership was one of the issues agreed for determination. The plaintiff suit was dismissed without costs, hence the desire to appeal to the court of appeal. The applicant has been represented by the learned counsel Mr. Mack Angelo Ishengoma while the Respondents have been represented by learned counsel Mr. Martin Masanja.

Mr. Ishengoma submitted that they pray for leave to appeal because there are points of law which the Court of Appeal should determine as the trial Judge misdirected herself for acknowledging the contract of sale agreement between and applicant and one Ally Abdallah but in her decision, at last she stated that because there was no transfer of ownership from PW1 to the applicant, then it removes ownership status to the applicant.

Mr. Ishengoma argued further that there is contradiction in law, because the Contract Law section 10, states that where there is valid contract then the transfer is considered done and can be enforced by the Law. He prayed that the leave to appeal to the Court of Appeal on point of Law be granted.

In reply Mr. Martin Masanja, learned counsel for Respondents objected the application, the decision in issue was valid, ownership was to be determined first for the court to reach to a proper decision on other issues. He explained further that Richard Majenga and Abdallah Ally had sale agreement of the suit land, the issue was whether there was transfer. The land was surveyed and Ally Abdallah Ally did not transfer the land to the applicant. That for surveyed land, one must go to the Land Office for transfer or search for ownership. The applicant did not have the title transferred to him. He continued to construct the house without permits, if you do not have permits the government can demolish and that is what happened. The counsel prayed that the application not be granted as there is no point of law. The trial Judge was right to determine first on ownership.

Having carefully considered the submission from the parties and after going through the affidavit and counter affidavit filed in the court by the parties, the court has found the issue to determine in this application is whether the applicant has managed to satisfy the court to be granted leave to appeal to the Court of Appeal. It has been stated in number of decided cases by this court and the Court of that, in an application for leave to appeal to the Court of Appeal the court is required to be satisfied that the grounds of appeal intended to be taken to the Court of Appeal show prima facie case or arguable appeal before granting the application.

This was the position in the case of **British Broadcasting Corporation V. Eric Sikujua Ngyimaryo, Civil Application No. 138**

of 2004, CAT at Dar es salaam (unreported) cited with approval in the case of **Hamis Mdida and Another V. The Registered Trustees of Islamic Foundation, CAT at Tabora, Civil Appeal No. 232 of 2018**, (unreported) where the Court of Appeal stated that;

*"As a matter of general principle, leave to appeal will be granted where the grounds of appeal raise Issues of general Importance or a **novel point of law** or where the grounds show prima facie case or arguable appeal." (Emphasis is mine)*

In the application at hand, I don't see any new point of law that the applicant wants to take it to the court of appeal. The issue of ownership of land has been discussed by hon Mkwizu in her decision, at page 10 of the typed judgment. Hon Judge citing the case of **Abually Alibhai vs Bhatia Brothers Ltd (2000) TLR 288-290**, she stated that;

'It is therefore from the above cited authorities that disposition is only complete after the approval of the proper authority. What is then the status of the plaintiff in this case whose sale transaction is intact? This area is not virgin. Court of appeal had once deliberated on a similar situation where transfer process were delayed after the sale agreement....'

Hon. Judge then based her decision on the decision of the court of appeal in **Jane Kimaro vs Adili (as administratrix of the estate of the late Adili Daniel Mande) Civil appeal no. 212 of 2016** and stated that;

'I am bound by the above decision. Plaintiff in this case has no valid claims against the defendants for having

not formalized his sale agreement as per requirement of the law...'

In the premises I find nothing new or importance that the applicant the applicant is not granted leave to Appeal to the Court of Appeal against the judgment of this court delivered in Land case No. 01 of 2018. Application is dismissed with no order for costs.

It is so ordered.




V. M. NONGWA
JUDGE
6/10/2022