

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
LAND DIVISION
AT MOSHI

MISC. LAND CASE APPLICATION NO. 29 OF 2022

*(c/f Misc. Application No. 6 of 2022 of the High Court of Moshi
originating from Application No. 39 of 2021 of the District Land and
Housing Tribunal of Moshi)*

ABDILLAH IBRAHIM..... APPLICANT

VERSUS

HUSSEIN BAKARI MSHANA RESPONDENT

RULING

19/9/2022 & 21/10/2022

SIMFUKWE,J

The applicant Abdillah Ibrahim, pursuant to **Section 47(2) of the Land Disputes Courts Acts, 2002** as Amended by **Section (b) of the Written Laws Miscellaneous Amendments (No.3) Act, 2018** has moved this court seeking for the following orders:

- 1. That leave be granted to Appeal to the Court of Appeal of Tanzania.*
- 2. The Cost of this application be provided for.*

The application is supported by an affidavit of the applicant which was contested by the counter affidavit of the respondent.


Page 1 of 4

Briefly, the genesis of this application is to the effect that, the applicant unsuccessfully applied for extension of time to file his appeal against the decision of the District Land and Housing Tribunal. After being aggrieved, he intends to appeal to the Court of Appeal of Tanzania against the said decision. As per the requirement of the law, the applicant is required to apply for leave before the High Court. Thus, the applicant accordingly lodged the instant application.


The hearing of this application was done *viva voce* whereas, the applicant was unrepresented while the respondent was represented by Mr. Martin Kilasara, learned counsel.

The applicant being unrepresented had nothing to say, rather he prayed the court to adopt his affidavit and consider it to grant this application.

In reply, Mr. Kilasara adopted the counter affidavit of the respondent to form part of his submission. He also prayed the court to examine the records to see if there is a prima facie case to be referred to the Court of Appeal.

He argued further that this case emanated from the District Land and Housing Tribunal of Moshi in Land Application No. 109 of 2008 which was decided in 2017 in favour of the respondent. Thereafter, the applicant appealed in Land Appeal No. 7 of 2020 which was decided on 25/2/2021 against the applicant. Then, the applicant filed Application No. 39 of 2021 before the District Land and Housing Tribunal. Mr. Kilasara prayed the court to consider the records of all the matters.

In the circumstances, Mr. Kilasara commented that this application has no merit and should be dismissed with costs.


Page 2 of 4

In his rejoinder, the applicant submitted that he was supplied with a copy of judgment out of time while he requested for the same in time. That, he raised such issue but it was not considered.

I have taken into consideration the submissions of the parties and their respective affidavits. The issue for determination is ***whether there is a point of law involved in this matter to warrant granting this application.***

The law is very clear, that leave to appeal to the Court of Appeal is granted where the grounds of appeal raise novel point of law and also it may be granted if there are arguable grounds of appeal. This was held in the case of **British Broad casting Corporation v Eric Sikujua Ng'maryo, Civil Application No. 133 of 2004** (Unreported) that:

*"Needless to say, leave to appeal is not automatic. It is within the discretion of the Court to grant or refuse leave. The discretion must, however be judiciously exercised on the materials before the court. **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 a prima facie or arguable appeal.** However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted."*Emphasis added

In the instant matter, under paragraph 6 of the applicant's affidavit among the intended grounds is that:

"6. That the learned Judge erred in holding that there is no any sufficient cause or account for each day of delay."

From the above quoted paragraph, I am of considered view that the same raises arguable ground worth determination by the Court of Appeal. In the case of **Jireys Nestory Mutalemwa vs Ngorongoro Conservation Area Authority, Civil Application No. 154 of 2016**, at page 10 it was held that:

*"...much as the grant of leave is discretionary, yet it is not automatic. The court adjudicating on such application is not left free to do so. It can grant leave to appeal **only where the grounds of the intended appeal raise arguable issues for the attention of the Court.**[Emphasis added]*

The learned counsel for the respondent was of different opinion that this application should not be granted. However, he did not state the reason why under the circumstances of this case leave should not be granted.

In the premises, I grant leave to the applicant to appeal to the Court of Appeal as prayed. Considering the circumstances of the case, no order as to costs.

It is so ordered.

Dated at Moshi this 21st day of October, 2022.



S. H. SIMFUKWE

JUDGE

21/10/2022