

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA**

AT SHINYANGA

MISC. CIVIL APPLICATION NO 51 OF 2019

*(Arising from the decision of the High Court of Tanzania, Shinyanga District Registry
in Consolidated Land Appeals No. 30 & 34 of 2017 dated 2nd December, 2019 [C.P
Mkeha J])*

1. **DEUS MICHAEL** (The Administrator of the
estate of the Late **SECILIA MTOLA**.....
2. **TABU MTOLA**.....
3. **MAGDALENA MTOLA**.....
4. **JOYCE ERNEST**.....
5. **NZUMBI NICHOLOUS**.....

APPLICANTS

VERSUS

JOSHUA HASSANI..... **RESPONDENT**

RULING

5th September & 31st October 2022

MKWIZU, J:

Respondent in this matter had successfully sued the applicants herein at the DLHT via Land application No. 48 of 2012 for a declaration that he is the first legal buyer of the suit land measuring 2.5 acres of land located at Malunga area in Kahama Urban. Aggrieved, the applicants filed two separate appeals in this court registered as Land appeal No 30 and 34 of 2017 which were later consolidated and determined as one. Like the trial tribunal's decision, the consolidated appeals were also decided in favour of the respondent. The appeal was essentially dismissed for lacking in merit.

Applicants are still not happy with the result of their appeal. They on 6/12/2019 filed a notice of appeal to the Court of Appeal challenging the outcome of their appeals in this court. And as required by the law, they have together with their Notice of Appeal filed this application for leave to appeal to the Court of Appeal in terms of the then section 47 (2), of the Land Disputes Courts Act, (Cap. 216 of the RE, 2002 now 2019) and rule 45 (a) of the Court of Appeal Rules, GN. No 368 of 2009 as amended.

The application is by a chamber summons supported by an affidavit deposed by a joint affidavit by the applicants. The application is resisted by the respondent through a counter affidavit deposed by Dutu Faustine Chebwa respondent's advocate sworn on 4th March 2021,

The matter was ordered to be heard through written submissions. Having considered the parties' affidavits and written submissions as well as this court's decision in Consolidated Land Appeals No. 38 & 34 of 2017 dated 2nd December 2019 [C.P Mkeha J], I find only one issue for determination of whether the intended grounds of appeal raise novel points of public importance to be determined by the Court of Appeal. This is in accord with the decision of the Court of Appeal in **Rugatina C.L v. The Advocates Committee and Clavery Mtindo Ngalapa**, Civil Application No. 98 of 2010 where the Court held:

"Leave is granted where the proposed appeal stands reasonable chances of success or where/ but not necessarily the proceedings as a whole reveal such disturbing features as to require the guidance of the Court of Appeal. The purpose of the provision is, therefore, to spare the Court the specter

of unmeriting matter and to enable it to give adequate attention to cases of true public importance.”

Paragraph 5 of the applicant's affidavit in support of the application raises six grounds that they consider worth for the sought approval for the Court of Appeal's consideration.

My perusal of the entire records and this court's decision reveals that grounds three, four, and five were not part of the determined appeal by this court as rightly submitted by the respondent's counsel. They are new grounds intended to be raised in a second appeal contrary to the law. These grounds are therefore not properly predicated and therefore the only grounds therefore suitable for the Court's determination are those itemized in grounds 1, 2, and 6 of the proposed grounds on:

1. Whether the doctrine of *res judicata* was properly applied to the matter at hand.
2. Whether there was a proper determination of the size of the suit land.
3. Whether the respondent's failure to pay the purchase price balance within a reasonable time constituted a breach of contract.

Leave is therefore granted on the above grounds only with no order as to costs.



DATED at Shinyanga this 31st day of OCTOBER 2022.


E.Y. MKWIZU
JUDGE
31/10/2022