

**“ORIGINAL”**

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

**TANGA DISTRICT REGISTRY**

**AT TANGA**

**MISC. LAND APPLICATION NO. 43 OF 2022**

**(Arising out of Land Appeal No. 14 of 2019, High Court Tanga dated 8<sup>th</sup> July 2020)**

**MAPINDUZI MBARUKU----- APPLICANT**

***VERSUS***

**HUSSEIN SUFIAN MKOMBOZI-----RESPONDENT**

**RULING**

**Date of Ruling- 10/11/2022**

**Mansoor, J:**

This is an application for leave to appeal to the Court of Appeal from the judgment passed on July 8, 2020, by the High Court of Tanga. The applicant had appealed to the High Court against the decision of the District Land and Housing Tribunal for Korogwe, it was Land Appeal No. 46 of 2018, the original case was determined by the Kwenjugo Ward Tribunal. The dispute is over a piece of land situate at Ngungwini



Kwesasu in Mandera Area in Handeni District. In all two Tribunals the appellant lost the case as the land was declared to be the property of the respondent. The applicant appealed to the High Court, the High Court dismissed the appeal and confirmed the decision of the lower Tribunals. The applicant wishes to appeal against the decision of the High Court, she applied for extension of time to appeal, and was granted.

In this application, the applicant contends that she is entitled, as a matter of right, to appeal and as her rights have been denied to her by the High Court and the courts below, this Court should, in exercise of its discretion, grant her leave to appeal to the Court of Appeal.

During the hearing of the application, the applicant was represented by Advocate Carlos Cuthbert, and the respondent was represented by Advocate Thomas Kitundu. The Advocate for the Applicant simply adopted the affidavit in support of the application, but he did not disclose the points of law which are to be considered in the intended appeal. He simply said the

judgment of the High Court is tainted with illegalities and irregularities. He did not say the illegalities or the irregularities.

An appeal could be taken to the Court of Appeal from any final judgment, decree or order of the High Court made on appeal or in exercise of its original jurisdiction, with leave to be issued by the High Court. Leave to appeal is not automatic, the High Court needs to be moved to grant the leave and the High Court has been vested with jurisdiction to grant leave only if the points of law are raised in the affidavit of the applicant, and the High Court is satisfied that those points of law are fit for appeal to the Court of Appeal. The appellate jurisdiction of the Court of Appeal from any judgment, decree, or final order of a High Court is exercised only if the High Court certifies that the case involves a substantial question of law to enable the Court of Appeal to entertain the appeals. An appeal would lie to the Court of Appeal from any judgment of the High Court exercising its appellate or Revisional powers but only with leave from any



such judgment. The Applicant is duty bound to state in the affidavit accompanying an application for leave the questions of law for consideration by the Court of Appeal. Thus, the applicant who wishes to appeal must show that his or her rights, were denied by the High Court, or that some error was made in the court that affected their due process rights. These are the points of law and they must be shown in the affidavit of the applicant. The Court then shall consider the points raised and should the High Court find that there exist points of law, the court will grant leave to appeal to the Court of Appeal. If there are no points of law involved, then the application would be superfluous as one cannot be allowed or given leave to appeal to the Court of Appeal, if there are no points of law raised. The applicant is duty bound to identify the points of law and the Court shall consider those points raised by the applicant to see if they really qualify as points of law to warrant certification or are worth to be considered by the Court of Appeal of Tanzania. Section 5 (2) (c) of the Appellate Jurisdiction Act Cap 141 confers jurisdiction on the

High Court to grant or refuse leave if no points are worthy the consideration by the Court of Appeal **(See, Auguster Salanje v. Mussa Mohamed Pemba, Civil Application No. 4 of 1991 (CA) (unreported);**

The High Court has discretion to grant leave only on points of law intended to be considered by the Court of Appeal. In **Mohamed Mohamed and Another v Omari Khatib, Civil Appeal No. 68 of 2011, CAT, at Zanzibar** (Unreported) quoting with approval the holding in **Ali Vuai Ali v Sowed Mzee Suwed, Civil Appeal No. 72 of 1998 (Unreported)**, the Court discussed what amounts to points of law, they said

*"...the purpose of a certificate for the class of appeals originating in primary courts was to ensure that deserving cases only reached the Court of Appeal. The exercise is therefore a screening process which would leave for the attention of the Court only those matters of legal significance and public importance."*

In the above cited cases the Court of Appeal categorically stated that

*"Not every error of law is fit for certification. We say so because in our understanding and appreciation of the memorandum of appeal we do not discern any serious point of legal significance. At best, the memorandum is an accumulation of alleged errors of law. We may as well say here that further to the decision in Ali Vuai Ali (supra) a point of law worthy being certified for our decision would be, for instance, where there is a novel point, where the issue raised is unprecedented, where the point sought to be certified has not been pronounced by this Court before and is significant or goes to the root of the decision, where the issue at stake involves jurisdiction, where the court(s) below misinterpreted the law etc. In this sense, a mere error of law will not be a good point worthy the certificate."*

**“ORIGINAL”**

The applicant did not raise at all any point of law worthy to be considered by the Court of Appeal. Since the Applicant failed to show the points of law in her affidavit as well as in the submissions, there cannot be granted the leave to appeal on a blanket or non-existence reasons to appeal.

Based on the above discussions, the application lacks merits, it is hereby dismissed, with costs.

DATED AND DELIVERED at TANGA this 10TH day of November, 2022



  
**L. MANSOOR**

**JUDGE**

**10<sup>TH</sup> NOVEMBER, 2022**