

IN THE HIGH COURT OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

MISC. LAND APPLICATION NO. 2 OF 2021

[Arising from Land Case Appeal No. 19 of 2019 of the High Court of Tanzania at Tabora, originating from Land Application No. 10 of 2015 of the District Land and Housing Tribunal for Tabora.]

SAAD RAMADHAN SAAD.....APPLICANT

VERSUS

JARUFU LUKOTO.....RESPONDENT

.....
RULING
.....

Date of Last Order: 30/09/2022

Date of Delivery: 7/12/2022

AMOUR S. KHAMIS, J.

Saad Ramadhan Saad filed this application seeking leave to appeal to the Court of Appeal after being aggrieved by the decision of this Court in Land Case Appeal No. 19 of 2019.

The application was made by chamber summons under Section 47(2) of the Land Dispute Courts Act, Cap 216 R.E 2019, Section 5(1)(c) of the Appellate Jurisdiction Act, Cap 141 R.E 2019, and Rule 45(a) of the Tanzania Court of Appeal Rules, 2009.

An affidavit affirmed by the applicant accompanied the application. In the affidavit, the affiant stated that Land Case Appeal No. 19 of 2019 arose from the decision of the District Land and Housing Tribunal for Tabora involving the subject matter of a

piece of unsurveyed land, and that the trial tribunal never declared the lawful owner of the disputed land. Instead, this Court declared the respondent as the lawful owner despite the illegalities tainted in this Court's decision.

The respondent resisted the application by a counter affidavit.

When the application came for hearing, Mr. Fadhili Kingu and Mr. M. K. Mtaki, learned advocates represented the applicant and respondent respectively.

During their oral submissions, Mr. Fadhili Kingu prayed to adopt contents of the applicant's affidavit and stated that, the granting of leave to appeal to the Court of Appeal is not automatic but rather a discretion of this Court. He added that discretion must be judiciously exercised and, on the materials, brought before the Court.

He further averred that it is a general principle that leave to appeal to the Court of Appeal will be granted where the grounds of the intended appeal raise issues of general importance or novel points of law or if there are arguable points of law or issue on appeal and also if there are disturbing features.

The learned advocate insisted that the application at hand has some legal issues or disturbing features which need to be considered by the Court of Appeal. And that, that requirement of the law was celebrated in the case of **ALBAN HAJI MOSI AND ANOTHER V OMAR HILLAL SEIF AND ANOTHER (2001) TLR 409** where the Court of Appeal at page 414 stipulated that:

“Leave is grantable where proposed the appeal stands reasonable chances of success or the proceedings as a whole reveals such disturbing features as to require the guidance of the CAT.”

Mr. Fadhil Kingu went ahead stating that para 7 and 8 of the affidavit supporting this application draw that requirement and the disturbing features as follows:

1. Whether it is proper for this Court to declare the respondent the legal owner of the land while the disputed land was not properly described or identified according to the mandatory requirements of the law.
2. Whether it is proper for this Court to determine issues raised suo motto by the District Land and Housing Tribunal without according parties to address and this Court comes to findings with those matters raised suo motto.
3. Whether it is proper for this Court to declare the respondent as legal owner and proceed to hear the appeal while the assessors' opinions were not read out to the parties before the judgment was delivered.
4. Whether there is a requirement of joining parties allocating the land in dispute as a necessary party.

Therefore, it is their submission that the applicant established arguable issues and disturbing features which need the intervention of the Highest Court of the Land.

He concluded that para 9 of the affidavit narrated that the intended appeal is meritoriously supported by the respondent.

On the other hand, Mr. Mtaki objected the application for it had no merits. He asserted that it is a second appeal where the applicant seeks to institute, and as established by the law in second appeals, the applicant must show that there are points of law that need the attention of the appellate court.

Mr. Mtaki also averred that the learned advocate for the applicant pointed out four areas where he thought he had grounds to convince this Court to grant the application. He argued that the first point is not a point of law, as the land in dispute was identified by the three witnesses brought by the respondent.

In regards to the second issue, the learned advocate averred that all the issues were properly addressed by both parties who were represented by advocates.

And the third issue about the opinion of assessors, Mr. Mtaki submitted that it was properly considered and accommodated in the judgment. Therefore, the applicant was not prejudiced by the opinion not being read to the parties.

Mr. Mtaki further asserted that the fourth issue mentioned by Mr. Kingu about the joinder of the village council was impliedly contended by the applicant. As the issue was discussed and considered by this Court and therefore it cannot form a base for an appeal to the Court of Appeal.

He concluded by praying for the Court to dismiss the application with costs.

On a brief rejoinder by Mr. Kingu, he argued that the law requires the land to be properly identified or established and that identification or description should be stated in the application and not by witnesses.

He averred that this Honourable Court should restrain itself from considering substantive issues that are to be dealt with by the appellate court. Mr. Kingu insisted that at this point the Court should limit itself to discussing points of law or disturbing features only.

Mr. Kingu insisted that the issue raised suo motto without according parties to address is an issue to be dealt with by the Court of Appeal on whether it was proper or not.

He further averred that it is clear that the opinion of the assessors was not read out, and the applicant pointed out whether the District Land and Housing Tribunal acted properly in law or not by not reading out the opinion of the assessors.

The learned advocate then concluded whether it was proper without joining the Village Council as a necessary party to the proceedings.

I have carefully considered the submissions from both learned advocates.

It is trite law that an application for leave to appeal to the Court of Appeal, may be granted where there is a point of law, or the intended appeal stands a good chance of success or there is a point of public importance to be determined by the Court of Appeal.

This principle has been displayed in a number of cases including the case of **HARBAN HAJI MOSI AND ANOTHER V. OMAR HULAL SEIF AND ANOTHER, CIVIL REFERENCE NO. 19 OF 1997** (unreported) which was quoted with approval in the case of **RUTAGATINA C.L V. THE ADVOCATES COMMITTEE AND CLIVERY MTINDO NGALAPA, CIVIL APPLICATION NO. 98 OF 2010**, wherein the Court of Appeal stated that:

“Leave is granted where the proposed appeal stands reasonable chances of success or where/ but not necessarily the proceedings as 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 spectre of unmeriting matter and to enable it to give adequate attention to cases of true public importance.”

Also, the case of **BRITISH BROADCASTING CORPORATION V. ERIC SIKUJUA NG'AMARYO, CIVIL APPLICATION NO. 133 OF 2004** (unreported) reiterated this principle thus:

“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 an issue of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal.”

Based on the above positions of the law and the submissions of both parties, I am of the view that the applicant has pointed out disturbing features on the face of the record which requires the intervention of the Court of Appeal.

In the upshot, I hereby allow the application and each party to bear their own costs.

It is so ordered.



AMOUR S. KHAMIS

JUDGE

7/12/2022

Date: 7/12/2022

Coram: Hon. H. Rweikiza Ag. DR

Applicants: Ms. Joyce Nkwabi, Holding brief Mr. Fadhil Kingu.

Present in person.

Respondents: Ms. Joyce Nkwabi, Advocate for respondent

Present in person.

B/C: Lucy Haule, RMA

MS. NKWABI, ADVOCATE

The matter is coming for ruling and we are ready.

ORDER

Ruling delivered in chambers before Ms. Joyce Nkwabi, Advocate for respondent also holding brief Mr. Fadhil Kingu, Advocate for applicant.

Both applicant and respondent were also present.



H. RWEIKIZA

AG. DEPUTY REGISTRAR

7/12/2022