

**IN THE HIGH COURT OF TANZANIA  
TABORA DISTRICT REGISTRY  
AT TABORA**

**MISC. LAND APPLICATION NO. 15 OF 2020**

[Arising from Land Appeal No. 11 of 2019 of the High Court of Tanzania at Tabora and Originating from Land Application No. 39A of 2017 of the District Land and Housing Tribunal for Tabora.]

**HAPPY IBRAHIM.....APPLICANT**

**VERSUS**

**PATRICK PAULINO MIKINDO.....1<sup>ST</sup> RESPONDENT**

**IBRAHIM MANONI.....2<sup>ND</sup> RESPONDENT**

**JOSEPHAT JOHN.....3<sup>RD</sup> RESPONDENT**

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**RULING**  
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*Date of Last Order: 21/10/2022*

*Date of Delivery: 12/12/2022*

**AMOUR S. KHAMIS, J.**

Happy Ibrahim, the applicant herein, filed this application seeking leave to appeal to the Court of Appeal against Judgment and Decree of this Court in Land Appeal No.11 Of 2019. The application was made under Section 47 (2) of the Land Disputes Court Act, Cap 216 R.E 2019.

The chamber summons, which initiated the application was supported by an affidavit sworn by the applicant's advocate, Mr. Emmanuel Bernard Musyani.

In the affidavit, the affiant states that the applicant was the appellant in Land Appeal No. 11 of 2019 which was dismissed before this Court, and therefore intends to appeal to the Court of Appeal on four points of law.

On the other hand, the first respondent strongly objected the application through his personal counter affidavit. There was no counter-affidavit from the second and third respondents.

When the application came for hearing, Happy Ibrahim was represented by Mr. Emmanuel Musyani, learned advocate while the first respondent, Patrick Paulino, was represented by Mr. Saikon Justin, learned advocate of this Court.

The second and third respondents did not show up throughout these proceedings. Upon proof of service by the Court Process Server through a sworn affidavit, this Court ordered the application to proceed ex parte against them.

The learned advocates for the applicant and the first respondent prayed for leave to dispose of the matter by way of written submissions which was accordingly granted. The timeline set by the Court was correspondingly complied with.

Submitting on behalf of the applicant, Mr. Musyani averred that leave to appeal to the Court of Appeal is not automatic but rather within the judicial discretion of this Court based on the materials laid before it.

As part of the submissions, he adopted contents of his affidavit in support of the Chamber Summons and contended that the issues in contention that needed guidance of the Court of Appeal were stated in paragraph four (4) of the affidavit, thus:

1. *Whether the appellate Court properly re-evaluated the evidence before it.*
2. *Whether the Judge was right or justifiable to hold that the land was handled by the owner Tatu Said.*
3. *Whether it was right or justifiable for the trial Judge to hold that the appellant was a trespasser.*
4. *Whether it was right or justifiable for the appellate Judge to hold that the dispute was reported to the Urambo District Commissioner and resolved amicably without due regard that the District Commissioner had no jurisdiction to determine the right of ownership of the parties.*

Mr. Musyani contended that if the evidence on record is re-examined it would be found that no one proved ownership of the disputed plot.

He contended that according to records, the applicant bought the disputed land in 2009 before the same was sold to the first respondent in 2010 as claimed.

He argued that it was wrong for this Court to rely on the evidence without considering that the applicant had bought the land in dispute in the year 2009 while the respondent claimed to have bought it in 2010.

Mr. Musyani asserted that the appellate tribunal was wrong to uphold the trial tribunal's decision that the dispute was solved and determined by the District Commissioner for Urambo without due regard to the fact that the District Commissioner had no jurisdiction to determine right of ownership between the parties.

He submitted that the proper channel ought to have been the Ward Tribunal, DLHT, and then the High Court.

The learned advocate for the applicant submitted that the appellate tribunal was wrong when it only relied on testimonies of the witnesses (oral evidence) without seeing or reading the actual minutes of the Government meeting which decided such allocation.

He concluded that the contentious points raised by the applicant required guidance from the Court of Appeal and that the same disclosed a likelihood of the appeal to succeed. Therefore, he prayed for the application to be granted.

Mr. Saikon Justin strongly opposed the application and adopted contents of the first respondent's counter affidavit to form part of his submissions in reply.

He argued that in the exercise of its discretion, this Court has to consider whether or not the applicant established the conditions laid down for her to be granted leave to appeal as articulated in the case of **HARBAH HAJI MOSI AND ANOTHER V. OMARI HILAL** thus:

*"Leave is grantable where the proposed appeal stands reasonable chance of success or where but not necessary, 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 spectre of un-meaning matters and to enable it to give adequate attention to cases of true public importance."*

The learned advocate for the respondent asserted that the applicant had failed to demonstrate the applicable conditions laid down in the above-cited case, and argued that there is no point of law or fact worthy of consideration by the Court of Appeal.

He further asserted that the four issues pointed out by the applicant reflected the standard of proof and evaluation of evidence on record which the Court of Appeal as the second appellate Court does not deal with.

The learned advocate for the respondent moved this Court not to grant the order sought and instead prayed for dismissal of application with costs.

There was no rejoinder by the applicant to the first respondent's written submissions.

Having gone through the parties' rival submissions, the issue for determination is whether the applicant advanced sufficient reasons to entitle him for leave to appeal to the Court of Appeal.

The law clearly provides that leave to appeal to the Court of Appeal may only be granted where there is a point of law, 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 was well elaborated in 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 CLAVERY MTINDO NGALAPA, CIVIL APPLICATION NO. 98 OF 2010**, wherein the Court of Appeal held:

*“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.”*

One of the four grounds laid down in the applicant's affidavit is on mandate of the Urambo District Commissioner to determine ownership of the disputed property between the parties.

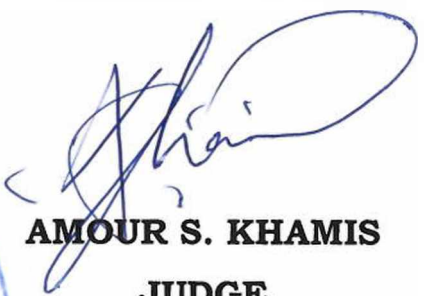
In my view, that contention touches on legal capacity of a Government official to adjudicate on land disputes, a jurisdiction which is exclusively vested upon special land courts and therefore the Court of Appeal should be the right venue for its determination.

In other words, the applicant has raised a disturbing feature on the face of the records which calls for the Court of Appeal's intervention.

In the upshot, the application is allowed and each party to bear own costs.

It is so ordered.



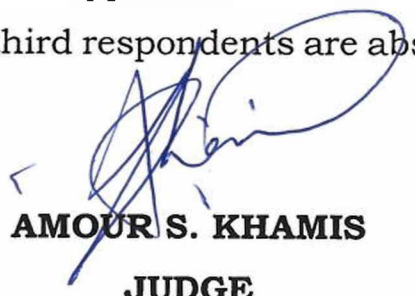
  
**AMOUR S. KHAMIS**  
**JUDGE**  
**12/12/2022**

**ORDER**

Ruling delivered in Chambers in presence of Mr. Saikon Justine, advocate for the first respondent and Ms. Christina Jackson advocate for the applicant.

The second and third respondents are absent. Right of Appeal is explained.



  
**AMOUR S. KHAMIS**  
**JUDGE**  
**12/12/2022**