

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISCELLANEOUS LAND APPLICATION NO. 57 OF 2022

(Originating from High Court of Tanzania at Mbeya Land Appeal No. 11 of 2022)

ZAUNA WILLIUM MGEMA (Administrator of estate of the late Safia Mpangule)..... APPLICANT

Versus

RAMADHANI ARONI MWANYAMBI1ST RESPONDENT

KOFU FRED 2ND RESPONDENT

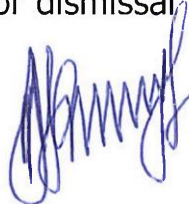
RULING

Date of last order: 09/11/2022

Date of ruling: 30/11/2022

NGUNYALE, J.

The applicant **ZAUNA WILLIUM MGEMA** (Administrator of estate of the late Safia Mpangule) was the appellant in LAND APPEAL NO. 11 OF 2022 against the respondents **RAMADHANI ARONI MWANYAMBI** and **KOFU FRED** over ownership of a house located at Igalako Street, Ilongo village within Igurusi – Mbarali District in Mbeya Region. The High Court Karayemaha, J. (as he then was) found that the appeal unmeritorious and dismissed it accordingly. The order of dismissal moved the applicant to



file the present application under section 47 (2) of the Land Disputes Courts Act Cap 216 R. E 2019 praying for the following orders; -

One, the court may be pleased to grant leave to appeal before the Court of Appeal of Tanzania, **two**, costs be in the course and **three**, any other relief the court may deem fit to grant.

The applicant supported her application by an affidavit in which under paragraph 5 she deponed that there were arguable legal issues to be determined by the Court of appeal of Tanzania to wit;

- (a) Whether the acts of the 1st respondent to sell the disputed land to the 2nd respondent without letters of administration of estate was lawful.*
- (b) Whether the 2nd respondent had no actual notice with regard to the dispute land that it was a family land.*
- (c) Whether the acts of the 1st respondent to forge the letter of administration of estate and sale the disputed land amounts to lawful transaction between him and the 2nd respondent.*
- (d) Whether the 2nd respondent was a bona fide purchaser of disputed land although there was undisputed evidence on record that he was cautioned by the village leader before he bought the disputed land.*

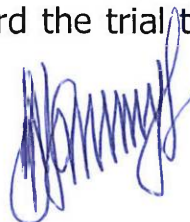
She went on to state that the learned Judge in deliberating his decision he did not consider the above points of law to which leave of this court is sought for the applicant to appeal to the Court of Appeal of Tanzania.



The application was resisted by the counter affidavit dully sworn by Sambwee Mwalyengo Shitambala the learned advocate who represented the applicant in Land Appeal No. 11 of 2022 in the High Court of Tanzania at Mbeya and the District Land and Housing Tribunal for Mbeya at Mbeya Application No. 103 of 2022. The learned advocate for the respondents stated that there is no point of law to the effect in the averments of the applicant in paragraph 5.

The application was called for hearing and the parties suggested the same to be disposed by written submission, the prayer of written submission was blessed by the court. The applicant was represented by Osiah Ambakisye Adam learned Advocate while the respondents were enjoying the service of Sambwee Mwalyengo Shitambala also learned Advocate. The court appreciates the work done by both counsels liaised with their clients to enable expeditious disposition of this application.

In a brief submission the applicant Counsel submitted that leave to appeal is not automatic, it is within the discretion of the High Court to grant or refuse it. The application on hand has the general importance for the Court of Appeal to determine if the act of the 1st respondent without a valid consent from the family members and a valid letter of administration of estate was lawful, as per the record the trial tribunal recognized the



tendered letter of administration of estate of which the trial court on its decision narrated that the same was not issued by the proper forum.

Leave to appeal is granted where the grounds raise issues of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal. The disputed sale from the 1st respondent to the 2nd respondent was without letters of administration of the estate was unlawful. This is a point of law which calls the attention of the Court of Appeal. The second respondent was not a bona fide purchase because he has notice or caution from the village authorities that the property is a family matter subject to probate, the issue whether he was a bonafide purchase need to be resolved by the Court of Appeal.

The applicant referred the court to the case of **British Broadcasting Corporation versus Eric Sikujua Ng'maryo** Civil Application No. 138 of 2004 Court of Appeal at Dar es Salaam (unreported) Nsekela, J in his decision cited the case of **Harban Haji Mosi and Another vs. Omar Hilal Seif and Seif Omar**, Civil Reference No. 19 of 1997 (unreported) where it was held that; -

"Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessary the proceedings as a whole reveal such disturbing features as required the guidance of the Court of Appeal, the purpose of the provision is therefore to spare the Court"




The learned Counsel concluded the submission by inviting the court to grant leave for the applicant to appeal to the Court of Appeal.

The respondent's Counsel was very brief and to the point that it is a general principle that leave to appeal to the Court of Appeal is granted upon points of law but the applicant herein seeks leave to appeal to the Court of Appeal but he has failed to show the clear points of law to rely upon. The first ground is a point of fact which ought to be criticized, cross examined and challenged in the lower courts. The points whether there was a sale and whether the said sale was lawful was a matter of evidence. Even the issue of administration of estate was far argued and concluded in the trial tribunal and the first appellate court as a matter of fact. The land was bought from the administrator of estate.

In conclusion the respondents submitted that the application and consequently the expected appeal stand no chance to win at all hence this application for leave be denied.

Keenly I have perused the documents and considered the brief submission made by the parties especially applicant affidavit. The main issue in my considered view is, whether the applicant has advanced clear points of law and grounds to warrant this court to grant leave to appeal to the Court of Appeal. It is the settled position of the law that for the court to consider



an application for leave to appeal to the Court of Appeal, there must be point (s) of law to be determined. It is also trite law that grant of leave or certificate to appeal to the Court of Appeal is a discretionary power of the court. The law on this point is very clear on what should the court consider before granting leave to appeal to the Court of Appeal of Tanzania against the judgment and orders given by this Court as I alluded above. It is clear that the decision which is intended to be appealed was made by this Court. However, before the High Court grants leave to appeal to the Court of Appeal the applicant must clearly show the points of laws that were not determined by the judge who made the decision against him.

The applicant has filed his application under section 47 (2) of the Land Disputes Courts Act Cap 216 R. E 2019 which provides; -

"A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may, with leave of the High Court or Court of Appeal, appeal to the Court of Appeal."

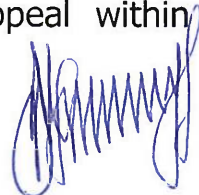
The above provision gives this court power to grant leave to the aggrieved party to appeal to the Court of Appeal of Tanzania but such provision does not provide specific conditions for the applicant to satisfy the court. There is requirement for showing point/points of law for any party who seeks leave from the High Court to appeal to the Court of Appeal as found in the Appellate Jurisdiction Act, Cap 141 [R.E.2022]. The provision of

section 5 (2) (c) of the Appellate Jurisdiction Act, Cap 141 [R.E.2002]
which provides that:

"no appeal shall lie against any decision or order of the High Court in any proceedings unless the High Court certifies that a point of law is involved in the decision or order"

The issue is whether the applicant has demonstrated points of law in his affidavit? Upon a careful perusal of the affidavit by the applicant I think the applicant has points of law that needs the attention of the Court of Appeal of Tanzania as far as probate and letter of administration are concerned. This court has in numerous decisions held that certificate or leave to appeal to the Court of Appeal can only be granted where the applicant has demonstrated existence of points of law in his affidavit. I am aware that leave to appeal is not automatic but rather a discretionary power of the court. Looking at the affidavit by the applicant especially paragraph 5 the applicant has established points of law which need to be determined by the Court of Appeal. I find no legal obstacle for granting the application, I do not take the argument of the respondent that there is no point of law which shows a likelihood of the appeal to succeed before the Court of Appeal.

In the end result, the application is granted as prayed. The applicant shall file an appeal to the Court of Appeal within the prescribed time.



Considering nature of the matter I make no orders as to costs. It is so ordered.

Dated at Mbeya this 30th day of November 2022.




D. P. Ngunyale
Judge