

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MOROGORO SUB-REGISTRY)

AT MOROGORO

MISC. LAND APPLICATION NO. 23 OF 2022

*(Arising from Land Appeal No. 6 of 2022 of the High Court of Tanzania, at Morogoro;
Originating from the District Land and Housing Tribunal for Morogoro, at Morogoro in
Land Application No. 179 of 2016)*

SALIMA SELEMANIAPPLICANT

VERSUS

JUDICA GODFREY UROKI.....1ST RESPONDENT

ABDALLAH MJOMBO ABDALLAH.....2ND RESPONDENT

RULING

19th & 26th Oct, 2022

CHABA, J.

In this application, the applicant is seeking leave to appeal to the Court of Appeal of Tanzania. The application has been brought in Court by way of Chamber Summons made and taken out under section 5 (1) (C) of the Appellate Jurisdiction Act, [Cap. 141 R. E, 2019] (the AJA) read together with the provision of section 47 (2) of the Land Disputes Courts Act [Cap. 216 R. E, 2019]. It is supported by an affidavit deposed by Mr. Ndanu Emmanuel, learned advocate for the applicant.



On the other hand, the respondents filed their separate counter affidavits contesting the application.

The background giving rise to this application may be stated as follows: Judica Godfrey Uroki, herein the 1st Respondent / Applicant at the trial District Land and Housing Tribunal (the DLHT) filed Land Application No. 179 of 2016 before the DLHT against Abdallah Mjombo Abdallah, herein 2nd Respondent / 1st Respondent at the DLHT (The Administrator of the Estates of the Late Shani Selemani) and Salima Selemani, herein Applicant / 2nd Respondent (The Administratrix of the Estates of the Late Selemani Juma) and one Majembe Auction Mart, not part to this application. In that Land Application, Judica Godfrey Uroki (1st Respondent herein) claimed that she had a valid Lease Agreement with Abdallah Mjombo Abdallah (2nd Respondent herein) and therefore prayed for perpetual injunction against Salima Selemani and Majembe Auction Mart (2nd and 3rd Respondents at the trial DLHT) plus general damages.

The said Land Application was heard on merits by the DLHT which ruled in favour of the 2nd Respondent / Applicant herein (Salima Selemani) on 14/01/2022. Also, she was declared to be the rightful owner of a Plot No. 150, Block "B" situated at Uhuru Street within Morogoro Municipal. The DLHT further declared that Lease Agreement between the 1st and 2nd Respondents (Judica and Abdallah) who featured as Applicant and 1st Respondent at the tribunal was invalid or illegal. In

that view, Abdallah Mjombo Abdallah was declared to be the trespasser to the disputed property and ordered to vacate from the building.

Aggrieved, Judica Godfrey Uroki (1st Respondent herein / Applicant) preferred an appeal before this Court vide Land Appeal No. 6 of 2022. At the end of the day, this Court (Hon. Ngwembe, J.) overturned the decision of the DLHT and nullified the judgment and decree thereof and set aside the proceedings of the trial tribunal. Moreover, the Court declared that the Lease Agreement entered on 8/12/2018 between Judica (1st Respondent herein / Applicant) and Abdallah (2nd Respondent herein / 1st Respondent) was valid and stated that Abdallah Mjombo Abdallah and Salima Selemani had to agree on the change of Land Lord.

However, Salima Selemani was unhappy with the decision of this Court in Land Appeal No. 6 of 2022, hence this application. Basically, the applicant is praying for the following orders:

- 1. That, this Court may be please to grant the applicant leave to appeal to the Court of Appeal of Tanzania against the judgment and decree of this Court (Hon. Ngwembe, J.) dated 16th May, 2022.*
- 2. Costs to follow the event,*
- 3. Any other reliefs as the Court shall deem fit to grant.*



At the hearing of the application, Mr. Ndanu Emmanuel, learned advocate entered appearance for the applicant, whereas Mr. Jackson Liwewa, learned advocate appeared for the 1st respondent and the 2nd respondent enjoyed the legal services of Mr. Hassan Nchimbi, also learned advocate.

Upon invited to take the floor to argue the application, Mr. Ndanu Emanuel prayed first to adopt the affidavit deposed by him in support of the application. He then continued to submit that, in essence the applicant is seeking leave to appeal to the Court of Appeal of Tanzania against the judgment and decree of this Court delivered on the 16th day of May, 2022 via Land Appeal No. 6 of 2022. He continued that, for a person to be granted this kind of application, he or she must establish before the Court the grounds of appeal which raises either issues of general importance of law, a novel point(s) of law where the grounds of appeal show prima facie case or if there is arguable appeal. To reinforce his argument, he referred this Court to the case of **British Broadcasting Corporation v. Eric Sikujua Ng'maryo**, Civil Application No. 138 of 2004 (Unreported).

He continued to submit that, the applicant has exhibited three grounds of appeal at paragraph 7 of the affidavit which contains three points of law to the effect that: **One;** Whether His Lordship was correct to hold that the 1st respondent had a valid Lease Agreement with the 2nd respondent, **Two;** Whether His Lordship was correct to hold that the 1st respondent was not a trespasser, and **Three;**

Whether the High Court Judge correctly held that the applicant ought to recognise the Lease Agreement entered by the 1st and 2nd respondents in 2018.

He went on arguing that, the dispute between parties is in respect of the landed property administered by the applicant, Salima Selemani. However, the 2nd respondent (Abdallah) who is not the owner of the landed property and not the administrator of the deceased's property entered into a Lease Agreement with the 1st respondent (Judica). He averred that, when the matter was heard by the District Land and Housing Tribunal for Morogoro at Morogoro it was ruled that the Lease Agreement between the 1st and 2nd respondents herein was invalid/illegal and therefore it proceeded to declare that Abdallah Mjombo Abdallah was a trespasser to the landed property in dispute on the ground of lacking ownership. Thus, the DLHT ordered Abdallah Mjombo Abdallah to vacate from the disputed property and declared Salima Selemani as the lawful owner of the disputed property for one reason that she had been appointed by the Urban Primary Court of Morogoro on the 2nd March, 2015 to be an administratrix of the Estates of the Late Selemeni Juma.

In reply to the submission advanced by the applicant's advocate, Mr. Liwewa, learned counsel who appeared for the 1st Respondent protested the application and submitted that, an appeal to the Court of Appeal of Tanzania is not an automatic. He contented that, leave being a legal requirement, the same



can be granted if the applicant will manage to raise issues of law as it was expounded in the case of **Nurbhai N. Rattansi v. Ministry of Water Construction Energy and Environment and Another (2005) TLR, 220.**

He added that, another crucial point to be shown by the applicant, is whether there is a chance of success in the intended appeal or arguable appeal. See the case of **British Broadcasting Corporation** (Supra). According to him, these requirements were supposed to be shown in the affidavit of the applicant. Failure to include these requirements in the applicant's affidavit is good as if there is no application before this Court. He therefore, argued this Court to refuse the applicant's application. To reinforce his contention, he cited the case of **Trans Africa Assurance Co. Ltd v. Cimbria 2002 EA 627.**

In conclusion, Mr. Liwewa averred that as the applicant did not comply with the requirements of the law, and taking into account that there are only grounds of appeal but without legal issues worth for consideration by the Court of Appeal of Tanzania, then this Court has nothing to grant the prayers sought by the applicant.

On his party, Mr. Nchimbi, learned advocate for the 2nd respondent commenced to argue by adopting the respondent's counter affidavit and prayed to form part and parcel of his oral submission. Essentially, Mr. Nchimbi joined hands with Mr. Liwewa and further submitted that the case of **British**

Broadcasting Corporation (Supra) is vital in the circumstance of this application as the Court quoted with approval the case of **Harban Haji Mosi and Another v. Omar Hilal Seif and Another [2001] TLR 409** and observed that:

"Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceeding 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 matters and to enable it to give adequate attention to cases of true public importance".

He concluded by underlining that as this application is useless, frivolous and vexatious its remedy is to be dismissed.

To rejoin, Mr. Ndanu reiterated what he submitted in chief and prayed the Court to disregard the submissions advanced by the learned advocates for the 1st and the 2nd respondents on the grounds of lacking merits.

I have keenly scrutinized the parties' pleadings and considered extensively the oral submissions made by both parties for and against the application. Generally speaking, there is no doubt that the spirit of the intended appeal to the



Court of Appeal of Tanzania by the applicant is to challenge the decision of this Court as hinted above.

In my considered view, the main issue for consideration and determination is whether the applicant has advanced clear points of law in terms of arguable issues worth for consideration by the Court of Appeal of Tanzania.

Before going to the merit of the application, I find it pertinent to point out that, it is mandatory for a person intending to appeal against the decision of the High Court as a first appellate court to apply and obtain leave to appeal. In land matters, a person intending to appeal is required to obtain leave under subsection (2) of section 47 of the Land Disputes Courts Act, [Cap. 216 R.E. 2019] (the LDCA) which states that:

"Any person who is aggrieved by the decision of the High Court (Land Division) in the exercise of its original, revisional or appellate jurisdiction, may with the leave of the High Court (Land Division) appeal to the Court of Appeal in accordance with Appellate Jurisdiction Act".

Apart from the above guiding principle in respect of appeal from the High Court, it is settled that a person applying for leave to appeal to the Court of Appeal must establish that there are contentious issues of law or disturbing features as to

require the guidance of the Court of Appeal. In substance, this is what it was interpreted in the case of **Said Ramadhan Mayange v. Abdallah Salehe [1996] TLR 74**. The Court observed that where there arise contentious issues of law, it is a fit case for further consideration by the Court of Appeal.

Having highlighted the position of the law, I now revert to the matter at hand. As hinted above, my task is to determine whether there are arguable issues worthy to be considered by the Court of Appeal. According to the affidavit sworn by the learned counsel for the applicant, paragraph 7 of the affidavit contains three issues which the applicant thinks and believes that the same needs consideration and determination by the Court of Appeal.

I have considered the oral submissions advanced by all learned advocates in line with the provisions of the law guiding the matter at hand and observed that the aim of the applicant is to exercise her rights of appeal in law so that she can be afforded a right to be heard and see that justice is seen to be done. On their party, the learned advocates for the respondents vehemently protested the application arguing that the applicant failed to demonstrate that there is a chance of success in the intended appeal as it was underscored in the case of **British Broadcasting Corporation** (Supra). As I indicated above, the applicant lined up three grounds as the basis for lodging her application. These grounds are:



- (a) *Whether His Lordship was correct to hold that the 1st respondent had a valid Lease Agreement with the 2nd respondent,*
- (b) *Whether His Lordship was correct to hold that the 1st respondent was not a trespasser, and*
- (c) *Whether the High Court Judge correctly held that the applicant ought to recognise the Lease Agreement entered by the 1st and 2nd respondents in 2018.*

The above mentioned three grounds of appeal, in my view are worth for consideration by the Court of Appeal and therefore it is paramount importance to allow the applicant to knock the door of the Court of Appeal to lodge the intended appeal. I am taking this position after warning myself on the danger which rigorously has been addressed by the Court of Appeal in various decisions in giving jurisprudential guidance in determining applications for leave to appeal. The danger is the likelihood of going to the substantive part of the issues in the intended appeal. For instance, in the case of **Jireys Nestory Mutalemwa v. Ngorongoro Conservation Area Authority** (Civil Application 154 of 2016) [2021] TZCA 9 (11 February 2021) (Cited from Tanzlii), the Court of Appeal of Tanzania held inter-alia that:

"The duty of the Court at this stage is to confine itself to the determination of whether the proposed grounds raise an



arguable issue(s) before the Court in the event leave is granted.

It is for this reason the Court brushed away the requirement to show that the appeal stands better chances of success a factor to be considered for the grant of leave to appeal. It is logical that holding so at this stage amounts to prejudging the merits of the appeal."

Placing reliance on the above principle of law, the gist of this application as alluded to above, is to challenge the impugned decision based on the aforementioned three grounds of appeal. Guided by the wisdom in the case of **Jireys Nestory Mutalemwa** (Supra), it is my considered opinion that the merit of the issues raised by the applicant needs intervention by the Court of Appeal.

Based on the above discussions, I find it appropriate in the interest of justice to allow the applicant and afford her with an opportunity to express her grievances before the Court of Appeal by way of appeal. The proposed grounds of appeal, in my view, do establish a prima facie and arguable issues worth for consideration by our Apex Court. All in all, this is a fit case to grant leave to appeal to the Court of Appeal of Tanzania.

All said and done, the prayers sought by the applicant are hereby granted as prayed save for the costs of this application. The applicant shall file her appeal




to the Court of Appeal of Tanzania within the time prescribed by the law, but from the date of receiving the copy of this ruling.

It is so ordered.

DATED at MOROGORO this 26th day of October, 2022.




M. J. Chaba

Judge

26/10/2022