

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA**

MISC. LAND APPLICATION NO. 103 OF 2021

(From the Decision of the High Court of Tanzania at Mbeya in Land
Appeal No. 71 of 2020.)

ALPHONCE SIWALE.....APPLICANT

VERSUS

ANDREA ANDIMILE KAMINYONGE.....1ST RESPONDENT
ISAYA ANDIMILE KAMINYONGE.....2ND RESPONDENT
GRACE ANDIMILE KAMINYONGE.....3RD RESPONDENT

RULING

Date of Last Order: 23/03/2022
Date of Ruling : 28/04/2022

MONGELLA, J.

This is an application for leave to appeal to the Court of Appeal against a decision of this Court (Karayemaha, J.) rendered in Land Appeal No. 71 of 2020. In the impugned decision, the respondent had appealed against the decision of the District Land and Housing Tribunal (the Tribunal) rendered in Application No. 23 of 2020. In the said application the respondents had applied for stay of execution. The applicant filed a defective counter affidavit which was struck out and the application granted in favour of the respondents. The High Court however, nullified



the proceedings and judgment of the Tribunal on the ground that the Tribunal assessors were not fully involved in adjudicating the matter.

Aggrieved by the decision, the applicant who fended for himself seeks to appeal against the decision of this court to the Court of Appeal. In his written submission, the argument he advanced is that the High Court decided on a matter not placed before it thereby intervening in the jurisdiction of the Court of Appeal. He argued so, on the ground that the respondents unsuccessfully filed in this Court Land Appeal No. 79 of 2018 which emanated from Application No. 23 of 2014 in the District Land and Housing Tribunal. Upon losing they filed notice of appeal to the Court of Appeal whereby the appeal is still pending in the Court of Appeal.

What I discern from his argument is that the High Court ought not to entertain the merits of Application No. 23 of 2014 as the respondent had filed an appeal concerning the said matter in the Court of Appeal. He was convinced that his application contains an arguable case warranting intervention by the Court of Appeal. He prayed for the Court to be guided by the decisions in **Loyce Butto Shushu Macdougall (As administratrix of the estate of the late Neil Richard Macdougall) vs. Studi Bakers Tanzania Limited & Another**, Misc. Land Application No. 392 of 2016 (HC at DSM, unreported); and that of **Frown Haule vs. Jackline Kalesa**, Misc. Civil Application No. 12 of 2018 (HC at Sumbawanga, unreported).

The respondents were represented by Mr. Simon Mwakolo, learned advocate. In his written submission, Mr. Mwakolo challenged the application mainly on the ground that no point of law has been

demonstrated by the applicant for determination by the Court of Appeal. He was of the view that this Court cannot exercise its discretionary powers to grant leave to appeal on unmentioned matters of law. He distinguished the cases cited by the applicant on the ground that in the said cases, particularly that of **Frown Haule** (supra) there were arguable points of law. He insisted that no point of law features in the applicant's application. he prayed for the same to be dismissed with costs.

In rejoinder, the applicant challenged Mr. Mwakolo's submission on the ground that he has failed to grasp the gist of his application and arguments advanced. He insisted that this Court erred in nullifying the Tribunal proceedings and judgment which were not the subject matter in the said appeal. He opposed Mr. Mwakolo's argument that no points of law have been advanced by the applicant for determination by the Court of Appeal. His stance on this was that in an application for leave, the applicant is only required to show that the proposed appeal stands reasonable chance of success or the proceedings as a whole reveal disturbing features. He argued that it is only on application for certificate on point of law where the applicant is obliged to show points of law involved in the intended appeal.

I have considered the arguments by the parties. From the outset I agree with the applicant that in an application for leave to appeal, the applicant needs not mandatorily demonstrate points of law, but rather arguable issue(s) or disturbing feature(s) in the impugned decision. The same can be on law or on facts. See: **Safari Mwazembe vs. Juma Fundisha**, Civil Appeal No. 503/06 of 2021 (CAT at Mbeya, unreported);

and *Harban Haji Mosi & Another vs. Omari Hilal Seif & Another* [2001] TLR 409.

To this juncture, the issue to be considered is therefore whether the applicant has demonstrated triable issues or disturbing features necessitating the intervention by the Court of Appeal. The applicant's main grievance is on whether this Court correctly nullified the proceedings and judgment of the Tribunal in Land Application No. 23 of 2003, while the appeal before it concerned Land Application No. 23 of 2020. He further argued that this Court usurped powers of the Court of Appeal on issues related to Land Application No. 23 of 2014 as the respondent had already filed a notice of appeal intending to challenge the decision of this Court rendered in respect of that case and the same is still pending in the Court of Appeal. Considering the applicant's argument, I am of the view that a disturbing feature has been demonstrated for determination by the Court of Appeal. I therefore grant the application as prayed with costs to be borne by the respondents.

Dated at Mbeya on this 28th day of April 2022.


L. M. MONGELLA
JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 28th day of April 2022 in the presence of the parties and Mr. Ramsey Mwamakamba, advocate for the respondents.




L. M. MONGELLA
JUDGE