

IN THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA
MISC. LAND APPLICATION NO. 23 OF 2020

(Arising from the decision of in Land Case Appeal No. 15 of 2020 High Court of Tanzania at Sumbawanga Dated 11th September 2020 Original Misc. Application No. 4 of 2018 in the District Land and Housing Tribunal for Katavi at Mpanda dated 16th March 2020)

KHADIJA ALLY.....APPLICANT

VERSUS

HASSAN MAHAMUD HASSAN.....RESPONDENT

RULING

Date of Last Order: 31/12/2021

Date of Ruling: 22/04/2022

NDUNGURU, J

The applicant lodged this application seeking leave to appeal to the Court of Appeal of Tanzania. The application is made under section 47 (2) of the Land Disputes Courts Act, Cap 216 RE 2019, section 5 (1) © of the Appellate Jurisdiction Act, 1979 and Rule 45 (a) of the Court of Appeal Rules, 2009 as amended by Rule 6 of Tanzania Court of Appeal (Amendments) Rules, 2017 GN. No. 362 of 2017) and it is accompanied by an affidavit deposed by the applicant's learned advocate. On the other hand, the respondent filed counter affidavit resisting the application.

When the application was scheduled for hearing, the applicant was represented by Mr Mathias Budodi, learned advocate while the respondent appeared in person, unrepresented.

During the oral submission, the counsel for the applicant prayed to adopt the affidavit and supplementary affidavit supporting this application to be part of his submission. He argued that paragraph 6 of the supplementary affidavit carries the points of law to be considered by the Court of Appeal. He further argued that paragraph 6 (1), the main point is that whether it was justifiable for the court to hold the decree which is not specific in the judgement of this Court and it was stated that the decree to be executed was specific, the court referred to the decree dated 16/03/2020 the contentious decree was 23/08/2017 which was related to the decision of the trial tribunal. While that of 16/03/2020 was related to the execution.

Mr Budodi submitted that, that was one of the points which for his view was proper to be considered by the Court of Appeal on whether there was compliance of **Order XX Rule 9** of the Civil Procedure Code.

Mr Budodi further submitted that under paragraph 6 (ii) (iii) & (iv), the applicant believes that this Court had a duty to revise the decision of the trial tribunal due to the vivid illegalities on the face of the record.

The applicant is of the view that the decision of the Court is based on illegality. The proceedings show that the opinions of assessors were not accommodated and read to the parties. He referred to me the case of **Ameir Mbaraka & Another vs Edgar Kahwili**, Civil Appeal No. 154 of 2015, unreported. He submitted that, in this case the Court of Appeal held that, the opinion of the assessors was not read before the parties. The court nullified the judgement of the trial tribunal by using its revision powers. The duty of the Court is to ensure compliance of law even if the matter was not raised by the parties. He cited the case of **Adelina Koku Anifa & Another vs Byarugaba Alex**, Civil Appeal No. 46 of 2019, unreported.

He finally prayed for the application be granted so that Court of Appeal may determine and it is a fit case for the court to consider.

On the other hand, the respondent prayed for the court to adopt counter affidavit and supplementary counter affidavit which he has filed to form part of the submission.

In this case, the applicant lost the case in the District Land and Housing Tribunal for Katavi. She lodged an appeal before this Court, the same she lost.

In the application for leave to appeal to the Court of Appeal, the law is very settled. Leave 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. There a number of cases that has insisted on the sufficient cause for leave to appeal to the Court of Appeal. See the cases of **Loyce Butto Shushu MacDougal vs Studi Bakers Tanzania Limited and Khalid Shaban Mtwangi**, Misc. Land Case Appeal No 220 of 2008. In the case of **Harban Haji Mosi and Another vs Omar Hulal Seif and Another**, Civil Reference No. 19 of 1997, unreported which was quoted with approval in the case of **Rugatina C. L vs The Advocates Committee and Clavery Mtindo Ngalapa**, Civil Application No. 98 of 2010, 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.”

The same principle was reiterated in the case of **British Broadcasting Corporation vs Eric Sikujua Ng'amaryo**, Civil Application No. 133 of 2004, unreported, 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 issue of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal.”

In the instant application, the applicant was aggrieved with the decision of the District Land and Housing Tribunal for Katavi at Mpanda, she thereafter unsuccessfully appealed to this Court. The appeal was dismissed. The applicant has applied for leave to the Court of Appeal to challenge the dismissal order of this Court.

Now, I am obliged to determine whether the applicant has advanced good cause for this Court to grant leave to appeal to the Court of Appeal. I have carefully perused the whole file and understood the nature of the dispute.

As per the position of law stated above, there might be chances of success in the intended appeal hence the intervention of the Court of Appeal is needed. I hereby allow the application. No order as to costs.

It is so ordered.



D. B. Ndunguru
D. B. NDUNGURU

JUDGE

22/04/2022