

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT MUSOMA**

MISC. LAND APPLICATION NO. 103 OF 2021

*(Arising from the decision of the High Court of Tanzania at Musoma in Land
Appeal No. 39 of 2021)*

MICHAEL OBIERO.....APPLICANT

VERSUS

AGER ONDIEK.....1ST RESPONDENT

ODIRA OBAYE.....2ND RESPONDENT

RULING

6th April & 12th May, 2022.

A. A. MBAGWA, J.:

This is an application for leave to appeal to the Court of Appeal. It is made under section 47(1) and (2) of the Land Disputes Courts Act by way of chamber summons and it is supported by the applicant's affidavit and reply to counter affidavit.

The application arises from Land Appeal No. 39 of 2021 which was decided by this Court (Hon. Mahimbali, J).

In contrast, the application is opposed by the respondents through their joint counter affidavit.

The applicant, Michael Obiero is the administrator of the estates of the later Obiero Okinyi, the applicant's father. The applicant successfully instituted a land suit to wit, Land Application No. 02 of 2020 before the District Land and Housing Tribunal for Tarime (DLHT) against the respondents. The respondents were aggrieved by the decision of the DLHT which declared the applicant a lawful owner of the suit premises. The respondents thus appealed to this Court in Land Appeal No. 39 of 2021 in which this Court quashed and set aside the DLHT decision and consequently, declared the respondents the lawful owners of the land in dispute.

It is obvious that the applicant is not happy with the decision of this Court and therefore he is determined to challenge it in the Court of Appeal, a course which requires the applicant to obtain leave of this court. As such, the applicant has brought the instant application.

The applicant states that the suit land was the property of his later father, Obiero Okinyi who acquired it through clearance in 1950's. The applicant further states that sometimes in 2013, the so called Umoja wa Wakulima Chereche trespassed into the suit premises, which act caused the applicant to institute a suit i.e. 31 of 2013 before the DLHT for Tarime. In the end, the DLHT declared the applicant a lawful owner of the disputed land. Applicant

further states that surprisingly, in 2019 the respondent encroached his land hence he instituted Land Application No. 2 of 2020 which was finally adjudged in his favour but the decision was later overturned by this Court in Land Appeal No. 39 of 2021.

The applicant has advanced the following grounds which he believes that they are worth of consideration by the Court of Appeal:

- (a) That the Honourable Judge erred both in law and fact by ignoring the judgment in rem arising out of Land Application No. 31 of 2013 in respect of the same disputed piece of land in which judgment the issue as to who is lawful owner of the disputed piece of land was settled and the said decision is intact to date and that being judgment in rem is against the whole decision
- (b) That the Honourable Judge erred both in law and fact by finding that the appellant failed to prove that the respondents are not owners of the disputed piece of land contrary to the evidence on record.
- (c) That the Honourable Judge erred both in law and fact by finding that the disputed piece of land was allocated to Paulus Maranda during the village settlement scheme without any proof while there

was ample evidence on record that the same village committee allocated the same piece of land to Uwachero in 2013 which act gave rise to Application No. 31 of 2013 which was resolved in the applicant's favour before the Tribunal.

In contrast, the respondents oppose the application. They filed a joint counter affidavit in which they categorically dispute the applicant's version on ownership of the land in dispute. The respondents state that the suit land was allocated to the late Paulus Maranda Ong'or, the 2nd respondent's father by the village council around 1973/1974. Further, the respondents state that they were not parties to the said Application No. 31 of 2013 nor did the case involve the suit premises. Also, the respondents claim that they have been in occupation of the suit premises since 1973.

When the matter came before me for hearing, both parties appeared in person, unrepresented.

Both parties, being laypersons, had nothing substantial to add to their depositions. The applicant adopted his affidavit and prayed the Court to consider grounds therein and grant the leave to appeal. Similarly, the 2nd

respondent, on behalf of both respondents, adopted their counter affidavit and prayed the Court dismiss the application.

It is a settled position that in application for leave to appeal, the question for determination is whether the applicant has raised arguable issues of either law or fact worth of consideration by the Court of Appeal. See **Bulyanhulu Mine Limited and 2 others vs Petrolube (T) Limited and another, Civil Appeal No.364/16 of 2017, CAT at Dar es Salaam.**

From the depositions of parties as indicated above, it appears that there are arguable issues of both law and facts which require consideration of the Court of Appeal. The issues include; one, whether the disputed land was acquired by the applicant's father in 1950's through clearance or it was allocated to the 2nd respondent's late father by the village council in 1973/1974 and two, whether the suit land in Application No. 31 of 2013 was the same suit land in Application No. 2 of 2020 and subsequently Land Appeal No. 39 of 2021.

In consideration of the above, I am of the view that the applicant's grounds raise arguable issues of both facts and law which deserve consideration of the Court of Appeal.

That said and done, I hereby grant the applicant leave to appeal to the Court of Appeal. Each party should bear its own costs.

It is so ordered.

Right of appeal is explained.




A. A. Mbagwa

JUDGE

12/05/2022

Court: Ruling has been delivered in the presence of the 2nd respondent and in absence of the applicant and the 1st respondent this 12th day of May, 2022.


A. A. Mbagwa

JUDGE

12/05/2022