

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

MISC. LAND APPLICATION NO.23 OF 2021

(Arising from the High Court of Tanzania at Mtwara in Land Appeal No. 23 of 2020 and originating from the District Land and Housing Tribunal for Lindi in Land Case No.38 of 2018)

BETWEEN

MABULA SAMSON MBUSI.....APPLICANT

VERSUS

LILIAN SAMSON LWEYO.....1ST RESPONDENT

KENGELE WILLIAM.....2ND RESPONDENT

RULING

Date of Last Order: 22/2/2022

Date of Ruling: 27/4/2022

LALTAIKA, J.:

The applicant, **MABULA SAMSON MBUSI** is praying for this court to grant him leave to appeal to the Court of Appeal of Tanzania against the decision of the High Court of Tanzania at Mtwara in Land Appeal No.23 of 2020 delivered on 12/8/2021 by Hon. W.P. Dyansobera, J. He is moving this court under section 47(2) of the Land Disputes Courts Act, [Cap. 216 R.E. 2019]. The application is supported by an affidavit sworn by Mr. Mabula Samson Mbusi. Needless to say, that the application is vehemently resisted by a counter affidavit deposed by the first respondent.

At this juncture, a factual background leading to this application is imperative. The first respondent, **LILIAN SAMSON LWEYO**, filed Land Application No.39 of 2018 before the District Land and Housing Tribunal for Lindi claiming ownership of Plot No.71 Block "A" Mitwero Street in Lindi Municipality. On 28/8/2020 the trial Tribunal declared the applicant the rightful owner of the disputed suit land. Aggrieved, the first respondent lodged her appeal to this court vide Land Appeal No. 23 of 2020. On 12/8/2021 this court delivered its judgment in favour of the first respondent. Dissatisfied, the applicant has lodged a Notice of Appeal to the Court of Appeal, hence this application.

When this matter was called on for hearing the applicant and first respondent both appeared in person and unrepresented. Also, the matter was heard ex-parte against the second respondent. When hearing commenced, the applicant submitted that there are matters of point of law which were not considered, analysed and determined by this court. The applicant stressed that those legal issues need consideration of the Court of Appeal of Tanzania.

Furthermore, the applicant pinpointed some of the matters on point of law which includes, **one**, this court erred in law in reversing the decision of the DLHT of Lindi without any document to prove that the land authority within Lindi and the first respondent had been allocated the suit land by the previous owner who had sold it to him. In addition, he argued that as per exhibits the DLHT for Lindi does not have any sale agreement between the first respondent and the District Council also between the District Council and Mr. William. **Two**, this court erred in law in failing to undertake its task of considering and analysing the evidence on record. **Three**, there are evidence which contradict each other on how they were

obtained including the receipts. **Four**, this court erred in law and failed to direct itself in considering the evidence of DW1 who is the appellant as per page 16 and 17 and that of DW2 Rashid Ibrahim as reflected at page 19 and 20. In addition, the applicant submitted that his sworn affidavit be adopted and form part of his submission as far as his application is concerned. Furthermore, the applicant argued and prayed this court to adopt the contents of paragraph 6 a, b, c, d and e of his deposed affidavit which are worth for consideration by the Court of Appeal.

In response, the first respondent submitted that the arguments by the applicant as appearing in his affidavit especially paragraph 6 a, b, c, d and e are vehemently disputed because they are not matter of law which attracts the consideration of the Court of Appeal. More so, the first respondent stressed further that the legal matters claimed by the applicant attracts proof from the lower court. She further insisted that this court considered the evidence gathered by the District Land and Housing Tribunal for Lindi and hence it arrived at a fair decision.

Apart from that, the first respondent submitted that she partly admits the contents of paragraph 7. However, she went further and argued that appeal is a Constitutional right which does not come automatically. In view of that submission, the first respondent prayed this court to dismiss the application by the applicant with costs.

Having keenly considered the submissions of both parties, I am inclined, at this juncture, to determine whether the applicant has raised matters of point of law or the matter is fit for determination by the Court of Appeal as elaborated in the case of **Nurbhain Ruttansi vs Ministry of Water Construction, Energy and Environment** [2005] TLR 220. Also, it is trite law that 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. See, **Rugatina C.L vs The Advocates Committee and Mtindo Ngalapa**, Civil Application No 98 of 2010, the Court elaborated 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 enable it to give adequate attention to cases of true public importance”

Also, the same principle was articulated in the case **British Broadcasting Corporation vs Eric Sikujua Ngámaryo**, 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 importance, leave to appeal will be granted where the grounds of appeal raise issue of general importance or a novel of law or where the grounds show prima facie or arguable appeal.”

In the light of the afore said principles governing grant of leave to appeal to the Court of Appeal, I am now obliged to determine whether the applicant has advanced good reasons for this court to grant him leave to appeal to the Court of Appeal. I have curiously and with great diligence gone through the reasons advanced by the applicant in pursuing his application. In the light of the above authorities in conjunction with the reasons advanced by the applicant as seen in his submission and paragraph 6 of the affidavit of the applicant. Based on the reasons advanced by the applicant and the position of law stated above, the

reasons have shown prima facie or an arguable appeal which needs intervention of the Court of Appeal.

From the foregoing, I hereby allow the application with no order as to costs.

It is so ordered.



E.I. LALTAIKA

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JUDGE

27.04.2022

This Ruling is delivered under my hand and the seal of this Court on this 27th day of April, 2022 in the presence of the applicant and the respondents, both unrepresented.



E. I. LALTAIKA

A handwritten signature in blue ink, appearing to read "E.I. Laltaika", written over a horizontal line.

JUDGE

27.04.2022