

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TANGA DISTRICT REGISTRY

AT TANGA

MISC. LAND APPLICATION NO 74 OF 2020

(Arising from Misc. Land Application No 43 of 2020 of the High Court of Tanzania at Tanga, Originating from Application for Execution No 100 of 2020 and Application No 53 of 2010 of The District Land and Housing Tribunal for Tanga at Tanga)

HASSAN KAPERA MTUMBA.....APPLICANT
(AS ADMINISTRATOR OF ESTATES OF THE LATE KAPERA MTUMBA) AND OTHERS

VERSUS

SALIM SULEIMAN HAMDU..... RESPONDENT

RULING

This is an application for leave to appeal to the Court of Appeal against the decision of this court in Misc. Land Application No 43 of 2020 which was dismissed on 30th October 2020. In that application the applicant herein had instituted an application for revision so that this court calls for and revises the proceedings and decision of the DLHT for Tanga at Tanga in application for Execution No 100 of 2020 in which he was allegedly not made a party and denied the right to be heard. The property for which parties are locking horns

in this case is Plot No 01, Block 208 situate at Ngamiani area in Tanga City and Region. The Applicant Hassan Kapera Mtumba who is suing as an administrator of the estate of the late Kapera Mtumba (deceased) was the Applicant in that application. The Respondent herein, Salim Suleiman Hamdu was also the Respondent in the Application No 43 of 2020 before the High Court of which leave is sought to appeal against.

The Application is pegged under section 47 (2) of the Land Disputes Courts Act Cap 216 R.E. 2019. The Section provides;-

(2) A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may, with leave of the High Court or Court of Appeal, appeal to the Court of Appeal.

As is the law and practice, this application is supported by the affidavit of the Applicant. The application is strongly opposed by the Respondent who filed a counter affidavit.

Under paragraph 5 (a-h) of his affidavit, the Applicant has listed questions he considers to be points of law which he wants to

pursue in the Court of Appeal. All these points were strongly disputed by the respondent through his counter affidavit.

In this present application both parties employed legal representation. Mr Mashaka Ngole, learned counsel appeared for the applicant while Mr. Obediodom Chanjarika also an advocate was for the Respondent. When this application came for hearing before me on 28th February 2022, parties agreed that the matter be heard by way of written submissions and so it was.

In support of the application, Mr. Mashaka Ngole, substantially cited a bundle of authorities regarding leave to appeal and reiterated what is deposed under paragraph 5 (a-h) of his affidavit. Questions he considers worthy of consideration by the Court of Appeal are in a nutshell that **One;** whether there were illegalities and irregularities in Application for Execution No 100 of 2020 of the DLHT of Tanga at Tanga, by carrying out eviction on a wrong house **Two;** whether there was inappropriate notification of a proper party in such execution proceedings; **Three;** whether there was denial of the right to be heard on the part of the applicant herein in execution proceedings **Four;** whether it was proper to

hold that a party who was not a party in previous proceedings could not challenge a decision emanating therein by way of revision etc.

Replying, Mr. Chanjarika briefly stated that execution according to him was not made on the wrong house. He stated this after having taken this court through the history of this dispute. There was no rejoinder filed and so it was upon this court from the affidavits for and against the application as well as the submissions filed, to decide whether or not to grant the application at hand.

Leave to appeal is a grant of permission by a court to institute proceedings appealing against a lower court's decision. One undisputed thing is that for the Applicant to succeed to obtain leave to appeal from this court to the Court of Appeal, he must satisfy the court that there is a substantial question or point of law worthy of consideration by the Court of Appeal. So far, there is no statutory test that applies or is required before the court can grant leave. However, there is a plethora of precedents on what to be considered before granting leave to appeal to the Court of Appeal. One of the cases is that of ***Simon Kabaka Daniel vs Mwita***

Marwa Nyangányi and 11 others (1989) TLR 64 as cited by the applicant, where it was observed; -

"In an application for leave to appeal to the Court of Appeal, the applicant must demonstrate that there is a point of law involved for the attention of the Court of Appeal....."

Likewise in the case of ***Sango Bay Estate vs Dresdner Bank (1971) EA 17***, the defunct East Africa Court of Appeal held, leave to appeal should be granted where there is an arguable appeal.

In this case the applicant has listed matters under paragraph 5 of his affidavit which he considers fit of consideration by the highest court of the land. The respondent has clearly not been able to show that the points raised by the applicant are not arguable by the court of appeal. Instead, he tended to go into the merits of the intended appeal by stating that the eviction was done in the right plot. Unfortunately, this court is not in a position to rule that out as the High Court is as of now functus officio. Right of appeal is a constitutional right under Article 13 (6) (a) of the constitution of the United Republic of Tanzania and the applicant is seen to have

points worthy of consideration by the Court of appeal. In that matter it is wise and prudent that the leave be granted forthwith.

I hereby grant the leave to appeal to the Applicant. He should file his appeal within the prescribed time as per Rules 83 (1) and (2) and 90 (1) of the Court of Appeal Rules 2009. Each party shall bear own costs.

DATED AND DELIVRED AT TANGA ON 28TH MARCH, 2022




LATIFA MANSOOR

JUDGE

28 MARCH, 2022