

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA

MISCELLANEOUS LAND APPLICATION NO 95 OF 2021

(Arising from Land Appeal No 21 of 2020 in the High Court of Tanzania at Mwanza and Original Land Application No. 20 of 2013 District Land and Housing Tribunal at Mwanza)

MBOLILE MADIMANYA MUDANGA (*the Administrator of the Estate of the late Madimanya Mudanga*).....**APPLICANT**

Versus

KAZIMILI PETRO (*the Administrator of the Estate of the late Venance Muyanga*).....**RESPONDENT**

RULING

18th & 24th March, 2022

Kahyoza, J.:

Mbolile Madimanya Mudanga (*the Administrator of the Estate of the late Madimanya Mudanga*) (**Mbolile**) lost both before the District Land and Housing Tribunal (DLHT) and before this Court. Aggrieved, Mbolile intends to appeal to the Court of Appeal. He applied for leave to appeal as required by law.

The issue for determination is whether Mbolile has an arguable case or there is a disturbing feature to require guidance of the Court of Appeal.

Mbolile supported the application for leave with his affidavit. The application proceeded *ex parte* as respondent defaulted to enter appearance on a date set for hearing. The respondent did not file a counter-affidavit. The Court heard the application orally. The applicant had nothing substantive to add to his affidavit.

After considering the applicant's affidavit I am of the firm view that the applicant did not demonstrate disturbing feature or an arguable issue of fact or law to be considered by the Court of Appeal. The applicant set a stage in first paragraph and in the second and third paragraphs, gave a brief chronology of events after this Court delivered its judgment. In fourth paragraph, the applicant stated that he stood a great chance of success. He did not demonstrate that chance. Whereas in the last paragraph, the applicant deposed that no certificate on point of law is required as the matter did not commence in the ward tribunal. Nowhere did the applicant demonstrate why he intends to appeal to the Court of Appeal. I reproduce the applicant's affidavit for sake of clarity as follows-

"AFFIDAVIT

I, MBOLILE MADIMANYA MUDANGA, Adult, Tanzanian, resident of Itandula village Magu District, Christian do hereby swear and states as follows :-

- 1. That, I am the Applicant in this Miscellaneous Application and former Applicant in High Court Land Appeal No. 21 of 2020, hence Conversant with facts deposed hereto.*

2. *That, the honourable High Court delivered Judgment and dissatisfied favour on 29/4/2021 at which I was aggrieved and dissatisfied.*
3. *That, I have already lodged Notice of Appeal intending to appeal to the court of Appeal of Tanzania.*
4. *That, the intended Appeal stands aver whelming chance of success.*
5. *That, since this Land Case did not originate from Ward Tribunal but from District Land and Housing Tribunal, it does not need certificate from High Court certifying points of Law involved in the Appeal, except leave of the High Court to Appeal to the Court of Appeal of Tanzania."*

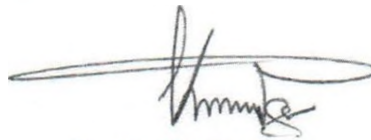
It is settled that in an application for leave, the applicant must demonstrate there are disturbing feature or that there is an arguable issue of fact or law to be considered by the Court of Appeal. It is not enough for a person to appear to this Court and argue that he wants to appeal as the decision of the High Court aggrieved him. He has a duty to establish a *prima facie case* of the intended appeal. In **Sanga Bay Estates Ltd & Others Vs. Dresdner Bank** (1971) EA 17, where the defunct East African Court of Appeal stated that a person applying for leave to appeal should prove that there are grounds of appeal which merit serious judicial consideration. It held-

"Leave to appeal from an order in civil proceedings will normally be granted where prima facie, it appears that there are grounds of appeal which merit serious judicial consideration"

In another case of **Said Ramadhani Mayange v Abdallah Salehe** [1996] TLR 74 the court held that where there arise contentious issues of law it is a fit case for further consideration by the Court of Appeal. Mbolile adduced no material to establish a *prima facie* case that he had an arguable appeal. I am alive of the fact that the High Court while considering application for leave it is not its duty to consider the merit or demerit of the appeal. Its duty is to find out if the applicant demonstrated a *prima facie* case. The applicant's affidavit did not advance any material to support an application for leave let alone grounds of appeal which merit serious judicial consideration. I find that the application has no merit.

In the upshot, having found the application without merit, I dismiss it. I make no order as to costs as the respondent did not appear.

It is ordered accordingly.



J. R. Kahyoza
JUDGE
24/03/2022

Court: Ruling delivered in the presence of the applicant and in the absence of the respondent. B/C Ms. Jackline (RMA) present.



J. R. Kahyoza
JUDGE
24/03/2022