

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MTWARA)
AT MTWARA

MISCELLANEOUS LAND APPLICATION NO.10 OF 2021

(Arising from the decision of the High Court of Tanzania at Mtwara in Land Appeal No. 36 of 2019. Originating from Land Case No. 80 of 2018 in the District Land and Housing Tribunal of Mtwara)

TATU IBRAHIMU SALUM (Administratrix of
the late Salum Ibrahim)..... **APPLICANT**

VERSUS

MWATAKAJE MZEE DADI**RESPONDENT**

Date of last order: 31/03/2022

Date of Ruling: 26/05/2022

RULING

Muruke, J.

Applicant has filed application before this court praying to be granted leave to appeal to the Court of Appeal, following her dissatisfaction with the decision of this Court in Land Appeal No. 36 of 2019. The application has been preferred under section 5(1) (c) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002, Rule 45(a) and (b) of the Tanzania Court of Appeal Rules 2009 and any other enabling provision of the law. The application is supported by an affidavit affirmed by Tatu Ibrahim Salum. Respondent filed counter affidavit to oppose the application. On the hearing date, both parties, asked this court to adopt their affidavit in

support of application as their submission in support of their case. The prayer that was granted by this court.

Going by the averments in the affidavit of applicant, she seeks to challenge the decision and orders of this Court which upheld the decision of the trial District Land and Housing Tribunal. Reasons for application are provided at paragraphs 2 and 3 of affidavit.

In the application for leave to appeal to the Court of Appeal, the law is 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. This was stated in numbers of cases including in the case of **Harban Haji Mosi and Another Vs. Omar Hald Seif and another, Civil Reference No. 19 of 1997**(unreported) quoted with approval in the case of **Rugatina C.L Vs. The Advocate Committee and Clavery Mtindo Ngalapa, Civil Application No. 98 of 2010**(unreported) the Court of Appeal stated that;

"Leave is granted where the proposed appeal stands reasonable chances of success or were, 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 spectra 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. Erick 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.”

I have carefully read the said judgment, and the reasons adduced by the applicant in her affidavit. Clearly, I understand Court of Appeal is not for adventurers, there must be serious issue to be discussed. Applicant affidavit does not suggest any point of law for consideration by Court of Appeal. Thus, leave to appeal to the Court of Appeal is refused with costs.




Z.G. Muruke

Judge

26/05/2022

Ruling delivered in the presence of applicant and respondent both in persons.




Z.G. Muruke

Judge

26/05/2022