

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)
AT ARUSHA**

CONSOLIDATED MISC. LAND APPLICATION NO. 38 & 39 OF 2021

(C/F Misc. Land Appeal No. 26 of 2012 High Court of Tanzania Arusha, Originating from Land Appeal No. 37 of 2011 In the District Land and Housing Tribunal for Arusha at Arusha, Original Land Application No. 11 of 2009 in the Kisongo Ward Tribunal)

MITALAMI LANG'ASANI1ST APPLICANT
HASSAN LANG'ASANI.....2ND APPLICANT
ESTA LANG'ASANI3RD APPLICANT

VERSUS

SAADA IDDIRESPONDENT

RULING OF THE COURT

19/04/2022 & 26/05/2022

GWAE, J

On the 6th October 2021 this court ordered for consolidation of Misc. Land Application No. 38 of 2021 and Miscellaneous Land Application No. 39 of 2021, for the purposes of convenient composition of a ruling regarding prayers of leave to appeal to the Court of Appeal of Tanzania and certification on the points of law worth for determination by the Court of Appeal of

Tanzania. Following the order, the two applications were consolidated hence this ruling.

Essentially, this is not the first time the applicants are moving this court to grant the sought prayers as on the 5th day of November 2013 this court (**Mwaimu, J (rtd)**) granted the applicants' application on certificate on points of law whereas on 22/09/2015 **Massengi, J (rtd)** also granted an application for leave for the applicants to appeal to the Court of Appeal of Tanzania. The applicants after being granted the above sought orders, they filed their appeal to the Court of Appeal of Tanzania unfortunately the same was struck out for containing defective records.

As the applicants were still persistent to pursue their constitutional right of appeal, they filed an application for extension of time to file notice of appeal, applications for leave and certificate on points of law out of time, the same was granted by this court on 04/06/2021. Subsequent to the court's orders extending time, the applicants have now filed the above-mentioned applications seeking for this court to grant leave and certify points of law to be determined by the Court of Appeal. The points of law demonstrated by the applicants are as hereunder;

- i. That, the Judge erred in law and in fact when he held that the doctrine of adverse possession was not applicable.
- ii. That, the judge erred both in law and in fact when he confirmed the defective decision of the Ward Tribunal which allowed the respondent to sue in her own name.
- iii. That, the judge erred both in law and in fact when he held that the respondent was having locus standi by virtue of power of attorney purportedly issued by Hawa Issa the purported administratrix of Makau.
- iv. That, the honorable judge erred in law and in fact when he held that the applicants did not acquire the disputed land during operational vijiji.

At the hearing of the applications, the applicants were duly represented by **Mr. Sylvester Kahunduka**, the learned advocate whilst the respondent appeared in person unrepresented. The applications were ordered to be disposed of by way of written submissions.

Supporting his application for leave to appeal to the Court of Appeal, Mr. Kahunduka argued that, there are legal issues which he believes the Court

of Appeal of Tanzania must intervene. He also contended that the application of this kind had previously been granted by this court.

On the prayer for certificate on points of law, Mr. Kahunduka submitted that, the points raised are purely points of law suitable to be certified by the court for determination by the Court of Appeal of Tanzania citing the case of **Saidi Ramadhani Mnyanga vs Abdallah Salehe** [1996] TLR 74. The counsel therefore prays the above points of law to be certified as they raise contentious issues. Finally, the counsel for applicants urged this court to grant the applications as there are injustices which have been occasioned to the applicants.

Responding to the above argument, the respondent's counsel argued that, the points of law raised by the applicants lack merit and do not demonstrate sufficient grounds to be granted leave to appeal to the Court of Appeal. Therefore, according to him, the applications for leave and certificate on points of law should be dismissed.

Having sensibly and judiciously considered the applications together with the written submissions presented by both parties, I now have to consider if these applications are meritorious or otherwise. It is the requirement of the

law under section 47 (2) and (3) of the Land Disputes Courts Act, Cap 216, Revised Edition, 2019 that, no appeal shall lie against a decision of the High court in the exercise of its appellate or revisional jurisdiction unless with the leave of the Court and where the appeal originates from Ward Tribunal the appellant must seek for Certificate from the High Court that there are points of law worthy to be considered by the Court of Appeal.

The principle of law governing the grant of leave to appeal to the Court of Appeal is the effect that the duty of this court is just to weigh out whether there are contentious issues requiring determination by the Court of Appeal and that the points of law are not matters of facts and evidence but purely points of law.

This position was stated by the Court of Appeal of Tanzania in the case of **British Broadcasting Corporation vs. Erick Sikujua Ng'maryo**, Civil Application No. 138 of 2004 (unreported) where the Court *inter alia* said;

“Needless to say, leave to appeal is not automatic. It is within the discretion of the work of the court to grant or refuse leave. The discretion should however be judiciously exercised and on the materials before the court. As a matter of general principle, leave to appeal will be granted where the grounds of appeal raise issues of general importance or novel point of

law or where the grounds show a prima facie or arguable appeal... However, where the grounds of appeal are frivolous, vexatious, useless or hypothetical, no leave will be granted."

More so, in the case of **Said Ramadhani** (Supra) it was also observed that contentious issues which demand determination by the Court of Appeal must be clearly shown and realized in the proceedings, impugned decision and records of the case.

In my opinion the applicants have met the above threshold through the proposed grounds of appeal as demonstrated in Mr. Kahunduka's affidavit. In fact, this court has also considered that the same applications were at once granted by this court, therefore I find no reason as why I should not grant the prayers sought by the applicant nevertheless, I am of the considered view that point of law **No. iv** demonstrated above does not constitute a pure point of law save evaluation of evidence and **ii** and **iii** are nothing but a repetition on the issue of locus standi.

Having said so, leave is hereby granted to the applicants to file their appeal to the Court of appeal of Tanzania. Equally, two points of law (i & iii) above are certified, namely;

- i. That, the Judge erred in law and in fact when he held that the doctrine of adverse possession was not applicable.
- ii. That, the judge erred both in law and in fact when he held that the respondent was having locus standi by virtue of power of attorney purportedly issued by Hawa Issa the purported administratrix of Makau.

Cost of these applications shall be in the course

It is so ordered.

Dated at **ARUSHA** this **26th** day of May, 2022




M. R. GWAE
JUDGE
26/05/2022