

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF ARUSHA)

AT ARUSHA

MISC LAND APPLICATION NO. 58 OF 2020

*(Originating from High Court of Tanzania at Arusha Land Appeal No. 20 of 2017 and
Original Karatu District Land and Housing Tribunal Application No. 22 of 2008)*

JOSEPH LOHAY AKUNAAY.....APPLICANT

VERSUS

PASKALI CLETI MAGHWAY.....RESPONDENT

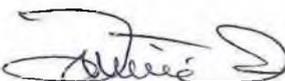
RULING

18 & 27th May, 2022

TIGANGA, J:

In this application, the applicant, Joseph Lohay Akonaay through the service of the learned counsel Ms. Rachel S. Mwainyekule, Advocate, moved the court under section 47 (1) of the Land Disputes Courts Act No. 2 of 2002, now referred to as [Cap 216 R.E. 2019] and any other enabling provision of the law asking for the following orders:

- (i) That the Court be pleased to grant leave to appeal to the Court of Appeal of Tanzania against the decision of the High Court of Tanzania Arusha District Registry in Land Appeal No. 20 of 2017 originating from Land Application No. 22 of 2008 delivered on 23rd day of February, 2018;

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(ii) Costs to be provided for, and

(iii) Any other relief (s) this court may deem fit and just to grant.

That was done by a chamber summons which is supported by the affidavit of Joseph Lohay Akonaay in which the grounds and reasons for the application have been forthwith deposed.

The main grounds of the application as deposed in the affidavit filed in support of the application, is that the applicant has strong grounds and making a good case to be argued in the Court of Appeal of Tanzania as contained in the intended memorandum of appeal, which are that, the first appellate court erred in law and when it held that the exhibit SA1 was not properly stamped according to stamp Duties Act, and allow the appeal instead of directing the stamp Duty to be paid.

It is also the contention of the appellant that the other intended grounds is that the 1st appellate court erred in expunging the exhibit SA1 from the record but at the same time continue to use the same document.

Physical service to the respondent was not possible because of his untraceability. Following that state of affairs, the court ordered service to be made by way of publication. Even after that publication, the respondent did not appear. On 09 March, 2022, this court ordered the application to be heard exparte.

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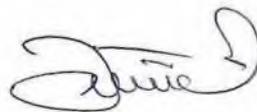
At the hearing, the applicant who was in person and also represented by Rachel Mwainyekule, Advocate. In the submission in support of the application the counsel for the applicant submitted that, the decision which they intended to challenge is based on illegality of the document. That the document was not paid for stamp duty but instead of ordering that the defaulting party pay for the stamp duty, the court allowed the appeal.

She prayed the court to be pleased to allow the application so that the Court of Appeal can rectify the illegality pleaded. As earlier on pointed out, the application at hand has been preferred under Section 47 (1) of Land Dispute Courts Act [Cap 216 R.E. 2019].

This provision provides as follows:

"47 (i) Duty person who is aggrieved by the decision of the High Court (Land Division in the exercise of its original, appellate or revisional jurisdiction may with leave from the High Court (Land Division) appeal to the Court of Appeal in accordance with the appellate jurisdiction Act".

As it can be ascertained from the provision, cited herein above, the same does not provide for the criteria to be considered in granting leave to appeal to the Court of Appeal, however case law has provided the general guidance.

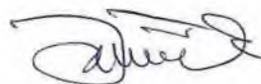
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In the case of **Harban Haji Mosi & Another Vs Omar Hilal Seif & Another, civil reference No. 19 of 1997** Court of Appeal of Tanzania, the following principles were laid down;

"Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily the proceedings as a whole reveal such a disturbing feature as to require the guidance of the Court of Appeal. The purpose of the provision therefore is to spare the court the spectre of unminting matters and to enable it to give adequate attention to cases of true public importance".

The other authority which this finds to be court worthy to refer is the case of **The British Broadcasting Cooperation Vs Erick Sikujua Ng'maryo, civil Application No. 138 of 2004**, Court of Appeal of Tanzania Dar-es-Salaam, (unreported) which cited and relied on the decision of **Swiss Port Tanzania Ltd Vs Michael Lugaiya** (supra) in which it was held inter alia that:

"Needless to say, leave to appeal is not automatic. It is the discretion 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 a 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”.

The issue with such disturbing application proving that there would be arguable appeal must be shown in the applicant both in his affidavit and the submissions.

I have carefully passed through the affidavit filed in support of the application and the arguments, made in support of the application. In paragraph 6 of the affidavit, the application, which the arguments by the learned counsel have expounded, as well as the intended grounds of appeal looking at all the materials put before me, in the sources I have just mentioned, I find that there is an arguable appeal before the Court of Appeal of Tanzania.

That said, I hereby grant an application. The leave is granted to the applicant to appeal to the Court of Appeal on the grounds submitted.

It is accordingly ordered.

DATED at ARUSHA, this 27th day of May, 2022.




J.C. TIGANGA
JUDGE