

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
MISC. LAND APPLICATION NO. 16 OF 2022
(Originating from High Court of Tanzania at Mbeya in Consolidated Land
Appeal No. 13/15 of 2021, originated from Application No. 29 of 2016
District Land and Housing Tribunal of Mbeya)**

MBEYA CITY COUNCIL.....APPLICANT

VERSUS

JAILOS MWANSELE.....1ST RESPONDENT
**ALAMA MWALUSAMBO MWAKALINGA (Administrator of estate of FIKIRI
MALAKALINGA MWALUSAMBO).....2ND RESPONDENT**
PETER LIKONOKA.....3RD RESPONDENT
ANYUBATILE MWAMENGO.....4TH RESPONDENT

R U L I N G

Dated: 24th February, 2023 & 28th February, 2023

KARAYEMAHA, J

On 24/02/2023 when I was preparing myself for the hearing, I noted that the application for leave to appeal to the Court of Appeal of Tanzania was entangled with irregularities and was not certain on which decision it was intended to. I found it prudent to call upon parties and discuss them prior going to the thick of the application. Of course both parties agreed with my observations.

Having one position that the application referred to the District Land and Housing Tribunal's decision, and some paragraphs in the supporting affidavit were not clear on whether they are grounds of appeal, parties locked horns on whether the application was to be struck out or the applicant be allowed to amend it.

Mr. Jibu and Ms. Mary Gatuna learned advocates preferred amendment but Mr. Felix Kapinga saw nothing to amend.

Mr. Chande also saw mistakes that can be simply amended. I as one do not agree with amendment. Unless, the applicant go by the (v) ground in the chamber summons, the rest, that is, (iii) and (iv) are not clear whether they fault this Court's decision or they were simply making statements. Where did this Court go wrong in those two statements, is not clear in my view.

Similarly, paragraphs in the affidavit need interpretation on whether the challenged decision is that of this Court or of the District Land and Housing Tribunal. An elementary knowledge of law entails that leave is granted when grounds are clear and not creating uncertainties. This Court granting leave and showing grounds that need to be considered by the Court of Appeal of Tanzania, is not placed to

interpret applicants grounds or turn vague statements into grounds of appeal.

Leave is grantable when this Court is certain that there is a point of law involved for attention of the Court of Appeal of Tanzania or where a disturbing feature is revealed as to require the guidance of Court of Appeal of Tanzania. See the case of **British Broadcasting Corporation v Erick Sikujua Ng'amaryo**, Civil Application No. 135 of 2004 (unreported).

These factors must be plain in the application. They must be certain not ambiguous. I believe, it is proper at this juncture to advise the applicant to retreat and compose the application whose spirit is to impugn a decision which created unhappiness to it.

In addition, the applicant must be aware that any process of appeal is initiated by the notice of appeal. Without them, the impending application is incompetent. It is the notice of appeal that initiates the appeal process to the Court of Appeal of Tanzania. See the case of **David Malili v Mwajuma Ramadhani**, Civil Appeal No. 119 of 2016. In that case, prior the filing of the appeal to Court of Appeal of Tanzania, the applicant had sought leave to appeal. Application was granted. When the appeal was called on for hearing, the Court sought

from parties whether the notice of appeal was filed. In the end it was categorical that the application was granted but no notice was lodged to initiate the appeal process. The appeal was struck out basing on that reason.

In this matter, there is no notice of appeal too.

On the basis of all that I have endeavoured to discuss, I find the application to have contravened the law and incompetent.

For reasons stated above, in the end, I hereby struck out the application. These issues being raised by this Court, each partly to bear own costs.

It is so ordered.

DATED at MBEYA this 28th day of February, 2023



A handwritten signature in black ink, appearing to read "J. M. Karayemaha", is written above a horizontal line.

J. M. KARAYEMAHA
JUDGE