IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

MISC. LAND APPLICATION NO. 66 OF 2022

(Appeal from the Judgment and Decree of the High Court of Tanzania at Shinyanga delivered by Hon. L. Hemed, J dated 6th October, 2022 in Land Appeal No. 23 of 2021, Originated from Land Application No. 53 of 2019 at the Maswa District Land and Housing Tribunal)

MHELA BAKARI..... APPLICANT

VERSUS

MANORI BAKARI.....1ST RESPONDENT

DEUS MAKAMA.....2ND RESPONDENT

RULING

Date of last order14/02/2023

Date of judgment 14/03/2022

MASSAM, J

This application by the applicant, MHELA BAKARI, is made under section 47 (2) of the Land Disputes Court Act, Cap 216 R.E 2019. According to the chamber summons, the applicant prayed for leave to appeal to the Court of Appeal of Tanzania (CAT) against the decision in

Land Appeal No. 23 of 2021. The applicant application is supported by his own affidavit. The application was objected by the respondents and they both filed counter affidavit sworn by themselves.

When the application was called for hearing on 14/02/2023, Mr Chrisantus Chengula, learned Counsel appeared for the applicant whilst the respondents appeared in person, unrepresented. The application was argued orally.

Supporting the application, Mr. Chengula prayed for his affidavit to be part of his submission and proceeded to argued paragraph seven (7) of his affidavit which has the source of the application. It was his submission that the trial tribunal erred to give 37½ acres to the 1st respondent while the applicant mention 18 acres and are the ones which was disputed as it was shown in page No 2 of the judgment instead of 371/2 acres. He argued further that it was wrong for the trial tribunal to hold that the applicant did not tender any sale agreement while the same was rejected by the Tribunal. He prayed for his application to be granted.

On his side, the 1st respondent objected the application for the reason that the disputed claim was 37 ½ acres and not 18 acres as alleged by the applicant, and when the tribunal ordered the applicant to

bring a sale agreement of 18 acres, he said it went with a river and he had no any witness to prove his claim.

As for the 2nd respondent, he objected the application for the reason that the applicant tendered a fake evidence at Maswa District Land and Housing Tribunal.

In brief rejoinder, counsel for the applicant argued that the respondents were supposed to bring counter affidavit regarding their claim of 37 ½ acres but they failed to do so, therefore, the first appellate court determine a different dispute, on which brought to the court.

I have considered the arguments by the learned counsel for the applicant and the respondents together with the record and the law.The issue to determine by this court is **whether this application has merit**.

According to Section 47 (2) of The Land Disputes Courts Acts Cap 216 provides that:

"A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate

jurisdiction may, with leave of the High Court or Court of Appeal, appeal to the Court of Appeal"

Also, in Dorina **N. Mkumwa vs Edwin David Hamis,**Civil Appeal No. 53 of 2017 (Unreported) the Court held that:

"In land disputes, the High Court is the final court on matters of fact. The legislature has taken this finality so seriously that it has, under subsection (1) and (2) o f section 47 of Cap 216 [as amended by the Written Laws (Miscellaneous Amendments) Act (No. 3) Act,2018 Act No. 8 of 2018] imposed on the intending appellant the statutory duty to obtain either leave or a certificate on point of law before appealing to this Court."

See also the case of **Fulgensi Mfunya vs Juma Hereye and 2 Others,** Civil Appeal No. 40 of 2020 (reported at Tanzliii).

Guided by the cited authorities this court find that the appeal to the Court of Appeal on the matter originated from the District Land and Housing Tribunal is not automatic as the party intending to appeal needs to be granted leave to appeal to the Court of Appeal by this court.

In exercising such discretion, the court will look on the intending grounds to be determined by the Court of appeal to see if they are worth an intervention by the Court of Appeal.

Our written law does not provide for the conditions for granting an application for leave to appeal to the Court of Appeal. However, case law does so.In order for the applicant to be granted this kind of application, the applicant is obliged to adduce grounds for the leave, and such grounds must be coated with merits.See the reasoned opinion of this court (Masanche J. as he then was) in **Razac Somji and 29 others vs National Housing Corporation,** HC, Misc. Civil Application No. 100 of 2004, at Mwanza following the firm view of **Spry VP**, in **Sango Bay Ltd vs Dresdner Bank** [1971] E. A. C. A. 17 and that of Lord Parker CJ, in **R. vs Stevens and Briston** [1968] Crim. L. R. 670.

The same was held in the case of **Citibank Tanzania Limited vs. Tanzania Telecommunications Company Ltd and 5 others**, High Court of Tanzania (Commercial Division), Misc. Commercial Cause No. 6 of 2003, at Dar es Salaam (unreported). In that precedent this court remarked that;

> *"I think it is now settled that, for an application for leave to appeal to succeed, the applicant must demonstrate that*

the proposed appeal raises contentious issues worth taking to the Court of Appeal or are of such public importance, or contain serious issues of misdirection or non direction likely to result in a failure of justice and worth consideration by the Court of Appeal....In an application of this nature, all that the Court needs to be addressed on, is whether or not the issues raised are contentious....the Court cannot look at nor decide either way on the merits or otherwise of the proposed grounds of appeal."

In our application the point raised by the applicant for this court to grant him leave to appeal to the court of appeal as per paragraph 7 of his affidavit are as follows:

1. *That the trial tribunal and the appellate court erred in law and in fact by ranting and upholding 37 ½ acres to the 1st respondent while the applicant pleaded only 18 acres that were under dispute.*
2. *That the trial tribunal and the appellate court erred in law and fact by ruling and upholding that the applicant did not tender the sale agreement while the same was tendered and rejected by the trial tribunal and the same was kept out*

of records. Copy of the said sale agreement and receipt evidencing the payment for additional document is hereby attached to form part of this affidavit.

3. *That the appellate court erred in law by failure to properly exercise and discharge its powers vested by law under Section 42 and 43 of the Land Disputes Courts Act [Cap 216 R.E 2019] in regard to the irregularities and illegalities occasioned by the trial tribunal.*

Thus, this court do find the first and third ground aremerited and worth the intervention of the Court of Appeal and proceed to grant leave to the applicant to appeal to the Court of Appeal based on the said grounds.

It is so ordered.

DATED at **SHINYANGA** this 14th day of March 2023.



R.B. MASSAM
JUDGE
14/03/2023