

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB- REGISTRY OF MWANZA**

**AT MWANZA**

**MISC. LAND APPLICATION NO.63 OF 2022**

*(Arising from the Judgment and Decree in Land Appeal case no 38 of 2021, before Hon. Kahyoza, J, dated 13.7.2022.)*

**PHILIPO MAKOYE ..... APPLICANT**

**VERSUS**

**ATHUMANI JOSEPHAT CHUGA ..... 1<sup>st</sup> RESPONDENT**

**GAHAI MAPENGO CHUGA ..... 2<sup>nd</sup> RESPONDENT**

**RULING**

*2<sup>nd</sup> March, & 10<sup>th</sup> March, 2023*

**ITEMBA, J**

The applicant herein is applying for leave to appeal to the Court of Appeal against the decision of this court, (Hon. Kahyoza, J), which was delivered on 13<sup>th</sup> July, 2022, in respect of Land Appeal No. 38 of 2021 issued by the District Land and Housing Tribunal for Mwanza (DLHT). The decision sought to be appealed against was entered in the respondent's favour, much to the applicant's dissatisfaction. The application has been preferred under the provisions of section 47 (2) of the Land Disputes Courts Act, Cap. 216 R.E. 2019. In support of the application, is an affidavit sworn by Mussa Joseph Nyamwelo, an advocate duly instructed

to represent the applicant, and it sets out grounds upon which the application is based.

The supporting affidavit has taken an exception to the Court's decision, holding the view that the same carries some decisional errors whose rectification can only be done through the impending appeal. Points of consternation are as stated between paragraph 7 and 14 of the said affidavit.

Hearing of the application proceeded *ex parte* as the respondents failed to show up despite being served with the summon which was received and signed on 24<sup>th</sup> day of October, 2022.

What I gathered from Mr. Nyamwelo's submission is that, the High Court erred in deciding that;

- i. Collective tendering of exhibit P1 did not compromise the applicant the right to be heard. That, the four exhibits were to be admitted separately as that is the position of the case laws including that of **Anthony M. Masanga Vs. Penina (Mama Mgesi) & Another** Civil Appeal no. 118.2014, CAT- establishes that exhibits should.*

- ii. *That the respondents discharged the burden of proof while there was no evidence submitted by the respondents on how they acquired the suit plot.*
- iii. *That, the issue that the certificate of title was fraudulently obtained was not raised in pleadings therefore it cannot be raised at appellate stage, while both parties conversed on it. The High Court had a duty to decide on it.*
- iv. *That, the issue that the sale of the suit plot was not authorized by village council was raised suo motto by the court without affording the parties the right to be heard. And;*
- v. *That, the fact that exhibit D4 was produced after the case was closed occasioned miscarriage of justice and encourages parties to manufacture evidence while Regulation 10(2) of the District Tribunal Regulations allows documentary evidence to be admitted at any stage. The High Court narrowed the statutory scope of procedures of admitting documentary exhibits.*

Having submitted as above stated, the learned counsel cited the cases of **Bulyamhulu Gold Mines Ltd & Others v Petrolube T. Ltd & Another**, Civil Application no. 354 of 2017 and **British Broadcasting Corporation (BBC) v. Eric Sikujua Ng'maryo**, Civil Application No. 138 of 2004, acknowledging that grant of leave is dependent on the

applicant's ability to demonstrate that there are important points of law and fact to be considered by the Court of Appeal.

It is trite law that, leave to appeal will be granted where the grounds of appeals raise issues of general importance or a novel point of law or where the grounds show a *prima facie* or arguable appeal. And that, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted. See the Court of Appeal decision in **British Broadcasting Corporation v Eric Sikujua Ng'maryo** Civil Application No. 138 of 2004 when Hon. Nsekela J.A (as he then was), was quoting with approval the case of **Buckle v. Holmes** (1926) All ER Rep. 90 at page 91).

I have considered the applicant's submission in support of his application for leave to appeal against the impugned judgment. However, I do not think that at this stage I am the appropriate forum to decide whether the appellate Judge erred or not. My cautious reading of the submission by the applicant's counsel does not however suggest that the proposed issues are frivolous, vexatious or useless. They are in my view *bonafide* arguable issues which may deserve the attention of the Court of

Appeal. Under the circumstances, I find that the application has merit.

Leave to appeal to the Court of Appeal is hereby granted.

Cost to abide the outcome of the intended appeal.

It is ordered accordingly.

DATED at **MWANZA** this 10<sup>th</sup> day of March, 2023.

  
  
**L. J. ITEMBA**  
**JUDGE**

Ruling delivered in the presence of Mr. Musa Nyamwelo counsel for the applicant, Ms. Gladness RMA and in the absence of the respondents.

  
**L.J. ITEMBA**  
**JUDGE**  
**10.03.2023**