

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IRINGA DISTRICT REGISTRY**  
**AT IRINGA**

**MISCELLANEOUS LAND APPLICATION NO. 45 OF 2022**

*(Arising from Land Appeal No. 14 of 2019 and Misc. Land Application No. 08 of 2022 in the High Court of Tanzania at Iringa, and Originating from Application No. 1 of 2016 in Iringa District Land and Housing Tribunal)*

**BETWEEN**

**RABIETH S/O MPEMBENI .....1<sup>ST</sup> APPLICANT**

**NIPANEEMA D/O MSEMO.....2<sup>ND</sup> APPLICANT**

**AND**

**BONITHA D/O MLYELYE ..... RESPONDENT**

**RULING**

**Date of Last Order: 07/03/2023**

**Date of Ruling: 31/03/2023**

**A.E. Mwipopo, J.**

Bonitha Mlyelye, the respondent herein, sued Rabieth Mpembeni and Nipaneema Msemo, applicants herein, in the District Land and Housing Tribunal for Iringa at Iringa for the claim of the suit premises located at Ngelango Village, within Ilula Ward. The respondent was claiming to buy the suit premises, but the applicants denied to sale the same. The trial Tribunal

allowed the application and ordered respondents to give vacant possession of the suit premises. Applicants were aggrieved and filed Land Case Appeal No. 14 of 2019 in this Court. The said appeal was dismissed with cost for wants of merits. Applicants were not satisfied with the decision of this Court in the appeal and they filed the present application for leave to appeal to the Court of Appeal. The application is filed by Chamber Summons supported by applicant's joint affidavit. The respondent decided not to file a counter affidavit and he was not opposing the application.

On the hearing date, applicants were represented by Advocate Marko Kusakala, whereas the respondent had the service of advocate Lazaro Hukumu.

It was submitted for the applicants that the grounds for application for leave is found in paragraph 6 (a) of the affidavit that whether it was proper for the first appellate court and trial tribunal to conduct the case while there is unclear involvement of assessors in the trial which vitiates the proceedings. Section 23(3) of the Land Dispute Courts Act provides how the District Land and Housing Tribunal is composed. In the trial Tribunal there was changes of assessors on different hearing dates. On 17/03/2016 assessors present were Magoha and Chalamila. On 14/06/2017 assessors

were Mgongolwa and Chalamila. On 03/08/2018 assessors were Magoha and Chalamila. On 30/11/2017 assessors present were Magoha and Mgongolwa. On 25/04/2018 assessors were Mgongolwa and Magoha. On 26/08/2018 assessors were Mgongolwa and Chalamila. On 11/09/2018 assessors were Mgongolwa and Chalamila. There is no one among the assessors who were present from the beginning to the end of the trial hence their involvement was not good. The High Court acknowledging the defect in the record of trial court in Misc. Land Application No. 08 of 2022.

As it was his stand from the beginning, the counsel for the respondent did not object to the application save only for the cost of the suit which he prayed to the Court not to grant.

From the submissions, the issue for determination is whether there are sufficient ground for the Court to grant leave for applicants to appeal to the Court of Appeal.

The law is settled that this Court has discretion to grant or refuse application for leave to appeal to the Court of Appeal. The leave is granted where the applicant has provided a good reason. In the case of **Kadili Zahoro (Administrator of the Estate of the late Bahati Ramadhani Mponda and Another vs. Mwanahawa Selemani**, Civil Application No.

137/ 01 of 2019, (unreported), at page 6 the Court of Appeal referred its previous decision in the case **Harban Haji Mosi and Another vs. Omar Hilal Seif and Another**, Civil Reference No. 19 of 1997, (unreported), where it stated that;

*"Leave is granted where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceedings as a whole reveal such disturbing features as to require the guidance of the Court of Appeal. The purpose of the provision is therefore to spare the Court the spectra of unmeriting matter and to enable it to give adequate attention to cases of true public importance"*

In the case of **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo**, Civil Application No. 138 of 2014, Court of Appeal of Tanzania, at Dar Es Salaam, (unreported), the Court of Appeal held that 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. Leave will not be granted where the grounds of appeal are frivolous, vexatious or useless or hypothetical. See also **Joseph Ndyamukama vs. NIC Bank and 2 Others**, Misc. Land Application No. 10 of 2014, High Court, Mwanza District Registry at Mwanza

(unreported), at page 3. The Court of Appeal was of similar position in the case of **Rutagatina C.L. vs. The Advocates Committee and Another**, Civil Application No. 98 of 2010, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported), the Court held that:-

*"An application for leave is usually granted if there is good reason, normally on a point of law or a point of public importance that calls for Court's intervention."*

In the present application, the applicant has filed notice of appeal on 27.12.2022 which is just 22 days after the impugned decision of this Court was delivered on 05.12.2022. Applicants' grounds of appeal intended to be referred to the Court of Appeal is concerning unclear involvement of assessors during trial. The counsel for applicants has elaborated on the ground of the intended appeal. I find the ground of appeal contains a good reason and it is on point of law.

For that reason, the application is allowed. The leave to appeal to the Court of Appeal is granted on the intended ground of appeal to be referred to the Court of appeal on the involvement of assessors during trial at Iringa District Land and Housing Tribunal. As the respondent did not object to the

application, each party to take care of his own cost. It is so ordered accordingly.



A handwritten signature in blue ink, appearing to be "A. E. Mwiipo", written over a horizontal line.

**A. E. MWIPOPO**  
**JUDGE**  
**31/03/2023**