

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. LAND APPLICATION NO.23 OF 2022

*(Originating from the High Court of Tanzania at Mtwara in Land Appeal
No.5 of 2011)*

MOHAMED HAMIS MAWA (The administrator of the

Estates of the late **HAMISI HASSANI MAWA**).....**APPLICANT**

VERSUS

SELEMANI OMARY.....**1ST RESPONDENT**

OMARY MMANGA NDUMBU.....**2ND RESPONDENT**

RULING

11.5.2023 & 12.5.2023

LALTAIKA, J.:

The applicant herein, **MOHAMED HAMIS MAWA** (The administrator of the Estates of the late **HAMISI HASSANI MAWA**) is praying for this court to grant him leave to appeal to the Court of Appeal of Tanzania against the decision of the High Court of Tanzania at Mtwara in Land Appeal No.5 of 2011 delivered on 4th September 2012 by Hon. I.S. Mipawa J. (As he then was).

The applicant is moving this court under Section 47(2) of the Land Disputes Courts Act [Cap. 141 R.E. 2019], Section 5(1) of the Appellate

Jurisdiction Act [Cap. 141 R.E. 2019] and Rule 45 (a) of the Tanzania Court of Appeal Rules, among other enabling provisions of the law. The application is supported by the affidavit affirmed by the applicant. It is noteworthy that this application has not been resisted by a counter affidavit of the respondents.

When this matter came up for hearing only the applicant appeared. To this end, in line with the dictates of justice, the interest of justice the matter was decided to be heard *ex-parte* against both the 1st and 2nd respondents. On his part the applicant submitted that he is dissatisfied with the decision of this court in Land Appeal No.5 of 2011 dated 4th September 2012. The applicant went on to argue that his lawyer is the one who delayed in properly advising him on what steps to take next. He further contended that he does not know what went wrong leading to this court to adjudge against him because he does not speak English. However, averred the appellant, everyone in the village knows that he is the rightful owner of the disputed land being his late father's farm.

Having keenly considered the application and submission I am inclined to determine whether or not this application for leave to the Court of Appeal of Tanzania has merit. I am alive that in our jurisdiction there are unlegislated principles which guides grant of leave to the Court of Appeal. However, the Court of Appeal and also this court have strived to make the guiding principles which this court or the Court of Appeal vides a second bite may exercise its discretion of either to grant or refuse to grant leave to appeal to the Court of Appeal of Tanzania.

The above principles that may be gleaned from a plethora of case law include the following; **one**, leave may be granted where there is a point of law, or the intended appeal stands a good chance of success or there is a point of public importance to be determined by the Court of Appeal. See, **Rugatina C.L. vs The Advocates Committed and Mtindo Ngalapa**, Civil Application 98 of 2010) [2011] TZCA 143 (18 February 2011), the Court elaborated:-

"Leave is granted where the proposed appeal stands reasonable chances of success or where, but not necessarily the proceedings as 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 specters of unmeriting matter and enable it to give adequate attention to cases of true public importance."

Also, the same principle was articulated in the case of **British Broadcasting Corporation vs Eric Sikujua Ng'amaryo**, Civil Application No. 138 of 2004 thus:-

"Needless to say, leave to appeal is not automatic. It is within the discretion of the Court to grant or refuse leave. The discretion must, however, be judiciously exercised on the material before the Court. As a matter of general importance, leave to appeal will be granted where the grounds of appeal raise issues of general importance or a novel of law or where the grounds show prima facie or arguable appeal."

Again, this court (Commercial Division), in the case **Citibank Tanzania Limited v. Tanzania Telecommunications Company Ltd and 5 others**, Misc. Commercial Cause No. 6 of 2003, at Dar es Salaam (unreported) Hon Massati, J. (As he then was) observed 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."

I have curiously and with great diligence gone through the reasons advanced by the applicant in pursuing his application in the light of the above authorities and in conjunction with the grounds advanced by the applicant as seen in his submission under paragraph 8 (i) and (ii) of the affirmed affidavit of the applicant. Based on such reasons and the position of the law stated above, I am fortified that the reasons/grounds pinpointed have shown prima facie or arguable appeal or raise matters on point of law which needs intervention of the Court of Appeal of Tanzania.

I will not go into the details of the reasons but I consider it prudent to pinpoint an issue or two that have captured my attention and, in my humble opinion, need intervention by the highest court of our land. The first ground, for example, needs the Court of Appeal to determine the issue whether the assessors of the District Land and Housing Tribunal are required to cross examine witnesses during trial. Furthermore, on the second ground the Court of Appeal will be tasked to determine the issue whether failure to read out the assessors' opinions to the parties is fatal.

In the upshot, I hereby grant the application with no order as to costs.



E.I. LALTAIKA

E.I. Laltaika
JUDGE
12.5.2023

COURT: This Ruling is delivered under my hand and the seal of this Court on this 12th day of May 2023 in the presence of applicant in person, unrepresented and in absence of the respondents.



E.I. LALTAIKA

E.I. Laltaika
JUDGE
12.5.2023