

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

**MISCELLANEOUS LAND APPLICATION NO. 37 OF 2022**

*(Arising from Land Case Appeal No. 16 of 2021, High Court of Tanzania at Tabora and original Land Application No. 9 of 2018 in the District Land and Housing Tribunal for Nzega)*

**MANDELA SAID KITUNDU..... APPLICANT**

**VERSUS**

**LEORNARD CHARLES MAGUMBA..... RESPONDENT**

*Date of Last Order: 02/05/2023*

*Date of Delivery: 19/05/2023*

**RULING**

**KADILU, J.**

The applicant seeks leave of this Court to appeal to the Court of Appeal of Tanzania. The application is made under Section 47 (1) (2) of the Land Disputes Courts Act, [Cap. 216 R.E. 2019] and supported by the applicant's affidavit. The respondent filed a counter affidavit to oppose the application. Briefly, the background is that the disputed house is built on Plot No. 387, Block B located at Nkokoto within Igunga District, owned by one Hussein Maingu. In 2010, the house in dispute was occupied by Mikidadi Selemani as a tenant.

The applicant found his wife having sexual intercourse with the said Mikidadi Selemani and filed Civil Case No. 79 of 2010 in the Primary Court of Igunga claiming for compensation for adultery. The case was decided in favour of the applicant. The said Mikidadi Selemani failed to pay compensation to the applicant hence, the applicant attached the house in

dispute in the execution process. The Primary Court of Igunga handed the house in dispute to the applicant as part of compensation after winning the civil case above. In 2011, the respondent purchased the disputed land from Hussein Maingu. The dispute arose between the applicant and the respondent. The respondent referred it to the District Land and Housing Tribunal for Igunga. The dispute was decided in favour of the respondent. The applicant was not satisfied with the decision of the Tribunal. He appealed to the High Court of Tanzania at Tabora where he lost. Still dissatisfied, he is intending to appeal to the Court of Appeal of Tanzania hence, this application.

The points which the applicant is seeking an intervention of the Court of Appeal are **firstly**, whether the respondent had *locus standi* to institute objection proceedings in Igunga Primary Court. **Secondly**, whether possession of title was invalid to prove the right of occupancy. **Thirdly**, whether a complete transfer of right of occupancy cannot prove ownership of a suit property. **Fourth**, whether the Land Officer had authority to prove ownership of the suit property. **Fifth**, whether the court's order in execution cannot change ownership of a suit property.

In his counter affidavit, the respondent stated generally that the points which the applicant is seeking determination by the court of appeal are matters which were not adjudged in the High Court. He therefore prayed for the court to dismiss the application. When the application was called for hearing, both parties appeared in person, unrepresented. The applicant failed to address the court focusing on his reasons for application as presented in his affidavit. He ended up raising new points. The respondent had therefore, to reply to what was submitted by the

applicant. As such, the court did not get much from submissions of the parties herein.

Under Section 47 (2) of the Land Disputes Courts Act, [Cap. 216 R.E. 2019], it is mandatory for a person intending to appeal against the decision of the High Court as the first appellate court to apply for and obtain leave to appeal. A person applying for leave to appeal must establish that there are contentious point(s) of law or disturbing features to require the guidance of the Court of Appeal. See the case ***of Said Ramadhani Mayange v Abdallah Salehe [1996] TLR 74***, in which it was held that where there are contentious issues of law, it is a fit case for further consideration by the Court of Appeal.

In determining whether to grant leave to appeal, the Court should guard itself against crossing a thin line of considering the merit of the appeal as the Court of Appeal had warned in ***Jireyes Nestory Mutalemwa vs. Ngorongoro Conservation Area Authority, CAT, Application No. 154 of 2016 (Unreported)***. In that case, the Court of Appeal observed that the court shall consider the grounds for seeking leave in isolation of the submissions seeming to challenge the findings of the High Court. It stated:

*"The duty of the Court at this stage is to confine itself to the determination of whether the proposed grounds raise an arguable issue(s) before the Court in the event leave is granted. It is for this reason the Court brushed away the requirement to show that the appeal stands better chances of success a factor to be considered for the grant of leave to appeal. It is logical that holding so at this stage amounts to prejudging the merits of the appeal."*

Given the above position of the law, the task of this Court is to determine whether there are arguable issues worthy to be considered by the Court of Appeal. The applicant raised several issues in his affidavit. During the hearing of this application, he prayed the court to allow the application. The records are clear that the respondent is a registered owner of the disputed house. Even after the challenged handing over of the house to the applicant by the Primary Court, the house was never transferred to him as a person from whom he has purported to have derived ownership was a mere tenant of that house.

These are the findings of the District Land and Housing Tribunal as well as the High Court as elucidated from pages 3 to 5 of the High Court judgment. In essence, the High Court cannot grant leave to appeal to the Court of Appeal if there is no point of law warranting the intervention of the Court of Appeal. In ***Mohamed Mohamed & Another v Omari Khatib***, Civil Appeal No. 68 of 2011, it was held that the purpose of certifying on the point of law is to ensure that deserving cases only reach to the Court of Appeal. The exercise is therefore a screening process which leaves for the attention of the Court of Appeal only those matters of legal significance and public importance.

Having gone through the affidavits and submissions of both the parties, I did not find any serious point of legal significance in the instant application. It is a settled position in our jurisdiction that, a point of law worthy for consideration by the Court of Appeal should be a novel point. This is to say, the point sought to be determined by the Court of Appeal should not have been pronounced by the Court before and is significant or goes to the root of the decision.

In my view, the applicant herein has not raised any novel point of law worth for consideration by the Court of Appeal. For this reason, leave has not been granted and the application is dismissed. Since neither party prayed for the costs of this application, each party shall bear his own costs. Right of Appeal is explained.

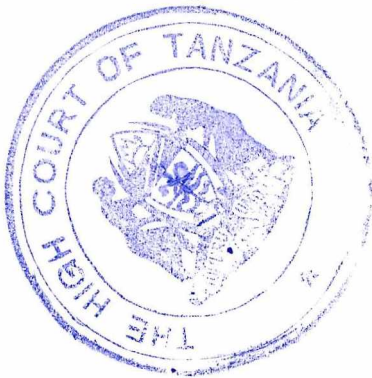
**Order accordingly.**

  
**KADILU, M.J.,**

**JUDGE**

**19/05/2023**

Ruling delivered in Chambers on the 19<sup>th</sup> Day of May, 2023 in the presence of Mr. Mandela Said Kitundu, the applicant and Mr. Leonard Charles Magumba, the respondent.



  
**KADILU, M.J.,**

**JUDGE**

**19/05/2023.**