

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

MBEYA DISTRICT REGISTRY

AT MBEYA

MISC. LAND APPLICATION NO. 74 OF 2022

Arising from the **IN THE HIGH COURT OF TANZANIA**

decision of the High Court of Tanzania at Mbeya in Land Appeal No. 34 of 2021 and Original Land Application No. 193 of 2016, District Land and Housing Tribunal of Mbeya.

FRANK ROMAN MATEMU.....APPLICANT

VERSUS

HASHIMU DAUDI MABOGA AND 19 OTHERS..... RESPONDENTS

RULING

Date of last order:12/04/2023

Date of Ruling: 31/05/2023

NDUNGURU, J.

The applicant one, Frank Roman Matemtu, has filed this application seeking for leave to appeal to the Court of Appeal of Tanzania against the decision of this Court (Hon. Ngunyale, J.) in the Land Appeal No. 34 of 2021. In his judgment the appeal was dismissed with costs. The application

has been brought under Section 47 (2) of the Land Disputes Courts Act (Cap 216 R.E. 2019), and Rule 45 (a) of the Court of Appeal Rules, 2019, the following prayers were canvassed in the chamber summons: -

1. That, this Honourable Court be pleased to grant leave to Appeal to the Court of Appeal of Tanzania.
2. That, Costs be provided for.

The affidavit in support of the prayers canvassed in the chamber summons was sworn by the Applicant. Upon duly served with the application, the respondents filed counter affidavit to oppose the application.

At the hearing of this application, the applicant enjoyed the services of Mr. Ladislaus Rwekaza, learned advocate whereas Ms. Mary Gatuna, learned advocate represented the 1st, 2nd, and 3rd respondent and Mr. Ambroce Nkwera, learned advocate, represented 4th to 17th respondents save for 10th respondent. In other side, Mr. Helman Mpogole, State Attorney, represented 18th to 20th respondents while the 10th respondent appeared in person, unrepresented. Upon the request of the parties, this Court allowed the parties to argue this appeal by way of written

submissions and they complied with the scheduling order of this Court, save for the 10th respondent. Therefore, I highly appreciate parties for complying with the scheduling order of this Court.

After carefully reviewing the record of the trial Court and considering the submissions of the counsel for the parties, the issue calling for determination is whether this application has merit or not.

In their respective submissions, counsel for the parties have made considerably lengthy submissions in respect of the grounds of the present application. Nevertheless, for convenient purpose I will not recapitulate them all here, rather I will be referring to them in the course of determining the relevant ground.

At the outset, I wish to state that the legal position on application of this nature. That, leave to appeal to the Court of Appeal of Tanzania would normally be granted if the applicant has shown that there exists prima facie disturbing features in this ruling/decision or in the proceedings in question as to require the guidance of the Court of Appeal. Indeed, the Court of Appeal has consistently held that leave to Appeal to the Court of Appeal be granted only when the intended Appeal has some merits, whether, legal or

factual.

The similar position is

well elaborated in the case of **Said Ramadwani Mnyanga v Abdalah Salehe** (1996) TLR 74 where the Court stated that;

"It is the requirement of the law that an application for leave to appeal to the Court of Appeal in proceedings from the High Court has to establish that there is merit (higher chances of success of the appeal) in the intended appeal factual or legal and that the appeal has a likelihood of success or that the raises contentious issue and is a fit case for further consideration by the Court of Appeal"

Also, see the case of **Wambele Mtumwa Shamta v Asha Juma**, Civil Application No. 45 of 1999 and **Frown Haule v Jackline Kalesa**, Misc. Civil Application No. 12 of 2018, HC at Sumbawanga (both unreported).

Again, in the case of **Gaudensia Mzungu vs. The I.D.M Mzumbe**, Civil Application No.94 of 1999 (unreported) the Court of Appeal observed that: -

"Again leave is not granted because there is arguable Appeal, which is crucially important is whether there is prima facie grounds meriting an appeal to this Court".

In the instant case, in his submission in chief at page 3 and 4, counsel for the applicant listed five issues and believe need the consideration of the Court of Appeal of Tanzania. In the first place, I agree with Ms. Gatuna that the submission in chief filed by the counsel for the applicant has more than five page, but for the interest of justice I grant exemption to him through oxygen principle.

Turning to the merit of the application, starting with the first issue listed by the counsel for the applicant, I agree with Ms. Gatuna that issue of jurisdiction of the District Land and Housing Tribunal for Mbeya to hear application No. 193 of 2016 was not part of the ground raised during the hearing of Land Appeal No. 34 of 2021 before this Court, but it is settled law that the issue of jurisdiction may be raised at any stage and even at stage of appeal before the Court of Appeal of Tanzania or this Court.

Further, it must be noted that, it is settled position of the law that, this Court at this stage has no duty to discuss in details the

merits of the intended appeal. In his submission in chief, apart from the issue of jurisdiction stated above, the counsel for the applicant also listed other issues namely; whether both the trial Court and appellate Court were correct to deny applicant's ownership of the suit land on the ground that he failed to call his family members for them to testify, whether was correct for the trial Court to consider the copied and pated submissions of the 18th to 20th respondents, and the counsel for the respondents 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, and 17th respondents, whether both the trial Court and appellate Court were proper to decide that the applicant acquired the title deed by illegal means without evidence to prove the same and lastly, whether the trial Court was correct to declare the respondents' as a lawful owners of the suit land while the applicant has the right of occupancy without making any order to that effect.

On the other side, both counsel for the respondents contended that, all matters raised by the applicant were already determined by the trial Court and appellate Court and there is no point to be considered by the Court of Appeal. Further, both counsel for the respondents submitted that,

the applicant did not show any sufficient reason showing prima facie ground for this Court to grant the present application. Finally, both counsel for the respondents prayed that, this application be dismissed with costs.

Upon perusal of the impugned judgment of this Court, pleadings, submissions filed by the counsel for the parties, and in the light of the authorities cited above, it is my settled opinion that, this application presents prima facie grounds that call attention of the Court of Appeal.

Based on the foregone, I am of the view that, the issues listed by the counsel for the applicant in his submission in chief and in the applicant's affidavit are arguable issues. For that reason, I grant the Applicant leave to Appeal to the Court of Appeal of Tanzania. I make no orders as to their costs.




D.B. NDUNGURU
JUDGE
31/05/2023