

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
THE SUB - REGISTRY OF MWANZA
AT MWANZA

MISCELLANEOUS LAND APPLICATION NO. 20 OF 2023

(From HC Land Appeal Civil Appeal No. 45 of 2022)

DEOGRATIAS FIDELIS **APPLICANT**

VERSUS

MICHAEL LUTANDULA **RESPONDENT**

RULING

May 23^d & June 6th, 2023

Morris, J

This application, moving the court to grant him leave to appeal to the Court of Appeal against the former court's decision of February 17th, 2023; is by Mr. Deogratias Fidelis. The application is brought under section 47(2) ***the Land Disputes Courts Act***, Cap 216 [R.E. 2019]. The affidavit by Deogratias Fidelis supports it. The respondent, Michael Lutandula, filed his counter affidavit in opposition.

The main ground advanced by the applicant hereof is that both the trial tribunal and this court failed to properly discharge their duty of evaluation and assessment of evidence. Such assertion is reflected in



paragraph 8 of the affidavit. Advocates Erick Katemi and Gibson Ishengoma represented the applicant and respondent respectively. When the matter was scheduled for hearing, through his counsel, the respondent registered his unwillingness to contest the application.

I have taken liberty to study the presented affidavits. The objective was to see to it that the applicant indeed exhibited and demonstrated an arguable case which merits the Court of Appeal's attention. Under the stated paragraph (8) of the affidavit, the applicant alleges that this court misdirected itself in whole undertaking of evidence-analysis. It is evident, therefore, that the said party faults the way the court discharged its statutory mandate of handling evidence. To me, this aspect is duo-tricky.

On the one hand, it seems like the applicant is pursuing the move that the evidence on records needs to be reassessed. This line of militancy meets the obvious principle that generally the second appellate court hardly deals with evaluation of evidence. On the other hand, however, the fronted ground allegedly implicates the court for having failed to adequately perform one of its noble functions thereby causing miscarriage of justice. The latter line of argument is purely a point which combines factual and legal aspects. It is a factual-legal hybrid. It is arguable. Even at the Court of Appeal.



To me, when principles of law are alleged to have been wrongly applied, parties should be accorded an opportunity to battle such allegations to finality. I also make reference the cases of ***Simon Kabaka Daniel v Mwita Marwa Nyang'anyi & 11 Others*** [1989] 64; ***Suleiman Nchambi v Sunny Auto Works***, Misc. Civil Application No.89 of 2019; and ***Cosmas Anton Itungulu v Timoth M. Irunde***, Misc. Land Application No. 69 of 2021 (both unreported).

Section 47(1) of ***the Land Disputes Courts Act***, (*supra*) provides that:

"47. (1);
 (2) A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may, with leave of the High Court or Court of Appeal, appeal to the Court of Appeal."

Principally, the quoted section does not specify factors to be considered by courts in granting or disallowing the application for leave to appeal. However, case law does. For instance, in ***British Broadcasting Corporation v Erick Sikujua Ng'maryo***, Civil Application No. 138 of 2004

(unreported) requisite conditions were set. They are contained in the excerpt below:

*"... 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 and on the materials before the court...**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**...However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted"* (emphasis added).

Basing on the foregoing court pronouncement, leave to appeal should be granted on a sound legal foundation. In circumstances of this matter, I am satisfied that the application is meritorious. It contains an issue which is contentious and arguable at the next stage of the matter. The substantiation of this conclusion has been rendered above.

I, accordingly, **grant leave** to Applicant for him to appeal against the decision of this Court in Land Appeal No. 45 of 2023. I make no order as to costs. It is so ordered.



C.K.K. Morris

Judge

June 6th, 2023