

**IN THE HIGH COURT OF TANZANIA**

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**MISC. LAND APPLICATION NO. 06 OF 2022**

*(Arising from the Decision of the High Court of Tanzania at Musoma in Land Appeal No. 53 of 2021)*

**MARIA CHACHA PAKA ..... APPLICANT**

***VERSUS***

**PAUL CHACHA PAKA ..... 1<sup>ST</sup> RESPONDENT**

**JOHN CHACHA PAKA ..... 2<sup>ND</sup> RESPONDENT**

**GHATI MANYENGO ..... 3<sup>RD</sup> RESPONDENT**

**SUZANA MASHAURI @ SUTI MASHAURI NGOMENI ..... 4<sup>TH</sup> RESPONDENT**

**JOSEPH RANGE ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

24 July & 25 July, 2023

**M. L. KOMBA, J.:**

The applicant in this suit, **MARIA CHACHA PAKA** is praying for this court to grant her leave to appeal to the Court of Appeal of Tanzania against the decision of the High Court of Tanzania at Musoma in Land Appeal No.53 of 2021 by Hon. Mahimbali, J.

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

Jurisdiction Act [Cap. 141 R.E. 2019]. The application is supported by the affidavit sworn by the applicant. It is noteworthy that this application has not been resisted by a counter affidavit of the respondents.

When the matter was scheduled for hearing, applicant enjoyed the legal service of Mr. Leonard Magwayega while all respondents were represented by Mr. Emmanuel Gervas, both learned advocates.

On his part the counsel for the applicant had a very short submission that he is dissatisfied with the decision of this court in Land Appeal 53 of 2021 by Hon. Mahimbali, J. The counsel went on to argue that he intends to appeal to the Court of Appeal of Tanzania as there is point of law as narrated in applicant's affidavit at paragraph 5. He prayed the affidavit to be adopted and finally pray for the leave with costs.

Mr. Gervas submitted that the application is filed under S. 47(2) of Land Disputes Courts Act, Cap 216 and that the section is about certification on legal issue where the matter started at Ward Tribunal. He contended that in the case at hand, the matter originated from District Land and Housing Tribunal (DLHT) and therefore the correct section is 47 (1). He submitted further that so far as the application cited section 5 (1) (c) of the Appellate

Jurisdiction Act, Cap 141 which is about the leave to appeal to the Court of Appeal of Tanzania and the chamber summons explain about leave, then he noted that section 47(2) is a human error and for the interest of justice they don't find it be health to dispute. He conceded with the application so that the highest court can provide a directive. He submitted that applicant did not deserve costs.

In rejoinder, counsel for the applicant submitted that miss non-citation of proper provision is not a bar as the remedy is rectification. He prayed this court to consider pleading where his intention is to apply for leave.

Having keenly considered the application and submission by both counsels, 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 it 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 CL vs. The Advocates Committed and Mtindo Ngalapa**, Civil Application 98 of 2010) [2011] TZCA 143.

Also, the same principle was articulated in the case of **British Broadcasting Corporation vs. Erick 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 point of law or where the grounds show prima facie or arguable appeal.'*

Again, this court (Commercial Division), in the case of **Citibank Tanzania Limited vs. 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 her application in the light of the above authorities and in conjunction with the grounds advanced by the applicant as seen in her affidavit under paragraph 5 (i) and (iv) of the sworn 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

second ground, for example, needs the Court of Appeal to determine the issue whether it was proper for the high court to decide the appeal before it as if it was the Probate and Administration of the Estate of the late PAKA CHACHA MUNIKO when it uphold the decision of the trial tribunal that the suit land was the property of the late Paka Chacha Muniko. I find this and many others are points need attention of the higher authority,


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

**DATED** at **MUSOMA** this 25<sup>th</sup> day of July, 2023.



  
**M. L. KOMBA**  
**Judge**

Ruling delivered in chamber in the presence of Mr. Magwayega counsel for the applicant in before respondents who appeared in person.

  
**M. L. KOMBA**  
**Judge**

**25 July, 2023**