

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB REGISTRY OF MANYARA
AT BABATI

MISC. LAND APPLICATION NO. 36 OF 2023

(Arising from Land Appeal No. 19 of 2022 of the High Court of Tanzania Manyara Sub-registry, Originating from Land Application No. 13 of 2021 in the District Land and Housing Tribunal for Mbulu at Dangobesh)

EDWARD DODI SINO.....APPLICANT

VERSUS

AGRICOLA BURA.....RESPONDENT

RULING

14th & 22nd August 2023

Kahyoza, J.:

Edward Dodi Sino, the applicant, lodged the instant application seeking for leave to appeal to the Court of Appeal against the decision of this Court arising from the appeal on matter originating from the District Land and Housing Tribunal (the DLHT). **Edward Dodi Sino**, sued **Agricola Bura**, his daughter in-law, for vacant possession of the suit land measuring 2.5 acres and compensation for crop destruction to a tune of TZS. 2,470,000/=. Unfortunately, **Edward Dodi Sino** lost the claims before the DLHT and he unsuccessfully appealed to this Court.

The applicant is seeking for a leave to appeal to the Court of Appeal, as depicted in the chamber summons and reproduced in the affidavit, on the following proposed grounds of appeal:

- i. *"That, the whole judgment in District Land and Housing Tribunal in Land Application No. 13 of 2021, involves illegality as there was no any validly document of ownership of the land presented by the respondent as per dictates of the law between the disputants culminating over the land that the land in dispute owned by the respondent also boundaries identified by the respondent are different from the land which which are indicated in the tittle deed of /1975 issued by the village Council of Gwandumehhi.*
- ii. *That, the whole judgment in District Land and Housing Tribunal in Land application No. 13 of 2021 the honourable Judge who presided over the Appeal erred in law on relying on evidence presented in District Land and Housing tribunal and testimony which occasioned cause injustice to applicant.*
- iii. *That, the judgment of High Court relaying on the acquiescence which infect no acquiescence by applicant and the court relaying on respondent staying over the land for 17 years can ultimately become the owner of the land based on the fact that the true owner does not claim back."*

Edward Dodi Sino, who was not represented, deponed in the affidavit and submitted that he is the lawful owner of the suit land from 1975, having a tittle to that land – under customary right of occupancy. That

the respondent is a widow of his late son, to whom he gave 0.75 acres of land to use it. And he has never repossessed the said land to date. The respondent without any colour of right trespassed to the land which was not given to her late husband.

Agricola Bura, the respondent, did not enter appearance when this application was called for hearing, and this Court ordered the matter to proceed *ex-parte*. However, in her counter affidavit she deponed that the decisions both in the Tribunal and in this Court, were correct, just, legal and fair, and that the appeal to the Court of Appeal will be a wastage of time and resources. That the proposed grounds of appeal are new grounds of appeal and that she has been in peaceful ownership since 2004 under the ambit of matrimonial ownership, up to the time of the emancipation of the dispute.

The Court when called upon to grant leave to appeal or otherwise, is duty bound to ascertain whether the applicant has an arguable case not to consider the merit of the application. The defunct East African Court of Appeal stated in **Sanga Bay Estates Ltd & Others Vs. Dresdner Bank** (1971) EA 17 stated that-

"Leave to appeal from an order in civil proceedings will normally be granted where prima facie, it appears that there are grounds of appeal which merit serious judicial consideration"

The Court of Appeal pronounced itself in **British Broadcasting Corporation vs Eric Sikujua Ng'maryo**, Civil Application No. 138 of 2004.

In that case, as cited in the case of **Rutagatina C. L. vs The Advocates Committee and Another**, Civil Application No. 98 of 2010 (both unreported) the Court stated that;

*"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 judiciously exercised and on the materials before the court. As a matter of general principle, 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 (see: **Buckie v Holmes** (1926) ALL E R. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted."*

The Court of Appeal cautioned a Court considering an application for leave to abstain making determination on substantive issues of the appeal. It pronounced a caution in the case of **The Regional Manager-TAN ROADS Lindi vs DB Shapriya and Company Ltd**, Civil Application No. 29 of 2012 CA (unreported) in which it stated that-

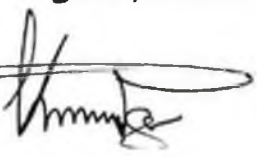
"It is now settled that a Court hearing an application should restrain from considering substantive issues that are to be dealt with by the appellate Court. This is so in order to avoid making decisions on substantive issues before the appeal itself is heard ..."

The issue is whether the application has disclosed arguable issue(s) worthy to be considered by the Court of Appeal. After considering the proposed grounds of appeal, the evidence on record and the judgment, I am satisfied that there are issues of law and facts worth consideration by the Court of Appeal. The application raises the issue whether person who obtains land from his parent is a licensee and whether the donee, the parent, would reclaim it and other issues as depicted in the affidavit. I accordingly allow the application and grant leave to appeal to the applicant to appeal to the Court of Appeal with costs.

It is ordered accordingly.

Dated at **Babati** this **22nd** day of **August**, 2023.





J. R. Kahyoza
Judge

Court: Ruling delivered in the presence of the applicant and the respondent who could not appear virtually to the Court. B/C Ms. Fatina Haymale(RMA) present.



A handwritten signature in black ink, appearing to read "J. R. Kahyoza", written over a horizontal line.

J. R. Kahyoza

Judge

22.08.2023