

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISCELLANEOUS LAND APPLICATION NO 10 OF 2023

(c/f Misc Land Appeal No 13 of 2022 High Court of Arusha, Land Appeal No 20 of 2021 Mbulu District Land and Housing Tribunal at Dongobesh; Land Complaint No 39 of 2021 Tumati Ward Tribunal)

ROSEMARY MARGWE _____ APPLICANT

VERSUS

MARGETH GIRAY _____ RESPONDENT

RULING

06th July 2023 & 25th August 2023

BADE, J.

This is an application for leave to appeal made under sections 47 (1), (2), and (3) of the Land Disputes Courts Act Cap 216 RE 2022 as amended by section 9 of the (Written Laws Miscellaneous Amendments Act) No 3 of 2018 and Rule 45(a) of the Court of Appeal Rules, 2009 as amended.

The Application emanates from the decision of Misc Land Appeal No. 13 of 2022 of Arusha High Court Registry before Mwaseba, J., and a previous District Land and Housing Tribunal Appeal No. 20 of 2021 at Mbulu. The Applicant has the services of advocate Richard Manyota, learned counsel and the Respondent fended for herself.

In support of the application, the Counsel for the Applicant prayed to have the chamber summons and the supporting affidavit of the Applicant adopted as part of the Application.

He submits that while he is aware that granting of this application is dependent on the Court's discretion, he urges to apply the discretion judiciously through the conditions as enunciated by the Court of Appeal, viz whether the applicants have a point of law or arguable appeal that would be presented to the Court of Appeal of Tanzania. In the affidavit, paragraphs 7, 8, and 9 reckoned the applicant's legal grounds:

The appellate tribunal and high court have failed to opine that the trial ward tribunal had no jurisdiction to entertain the matter since the value of the subject matter remained unknown to both parties contrary to section 15 of the Land Disputes Courts Act Cap 216 RE

2019, as a result, an erroneous decision was pronounced; and that the two appellate courts have failed to properly analyze the principle of visiting locus in quo resulting to a bad decision, and lastly that they have erred in law for failing to observe the requirements of Section 64(1), (a), (b) of the Land Act, Cap 113 RE 2019 as a result a shoddy decision was pronounced.

The applicants' desire is for the Court of Appeal to look, and determine the detailed issues of fact and law as enumerated above.

Counsel for the Applicant stated that they have issued a notice of appeal on 09 /01/2023, and had served the respondent, but we are now applying for the leave and certification of the point of law.

He also put in reference the case of **Innocent Bisusa vs Rajabu Mgozi**, Civil Application No 680 of 2021, CAT at Kigoma; Lady Justice Mugasha insisted that leave application is indispensable for an appeal to be admitted and considered, and thus the instant application.

In para 7 and 8 of the affidavit, 2 legal principles are in contention. The issue was recognizing that the Tumati Ward tribunal had no pecuniary jurisdiction to hear the matter as its limit exceeded the value of the subject

matter, which was unknown by the parties, against section 15 of the Land Disputes Act Cap 216.

The other aspect of the legal certification was brought about through the 2nd appellate court, which failed to analyze the principle of visiting the locus in quo, since the chairperson of the Ward Tribunal of Tumati, became a witness on the matter as opposed to being a adjudicator. So these two aspects were not decided upon or evaluated properly for the court to come to a just decision. So he concludes, that in principle, these are the legal proposition requiring determination by the Court of Appeal. On that basis, he reasoned that these points formed the basis for an arguable appeal on a point of law and fact; and thus leave should be granted so as to be able to present and argue an appeal at the Court of Appeal.

He argues that the aspect of the legal certification was brought about through the 2nd appellate court, which failed to analyze the principles of visiting the locus in quo. He argues that in visiting the locus in quo on the while the matter was at the trial stage, the chairperson of the Ward Tribunal of Tumati became a witness on the matter as opposed to being an adjudicator. So he concludes these two aspects were not decided upon or evaluated properly for the court to come to a just decision. He argues that

in the High Court Land Appeal no 13 of 2022, the said issue of visiting the locus in quo was not properly looked at as per the guidance of the Court of Appeal of Tanzania. Further, he argues that the High Court agreed on the value of the suit land was unknown, and hence there was no valuation report to ascertain such, but leave it at that.

In response, the Respondent's counter-affidavit is unyielding as she controverted the facts as stated in the affidavit of the Applicant. Paragraphs 4, 5, and 6 are particularly relatable. She contends in her oral submission that the subject matter was 2.7M and the Applicant did not ascertain the value, but since she is the owner of this suit land, she contends to be the one who knew the value of the subject matter, and that she finds it absurd for it to be said that the value of the subject matter is unknown. She firmly points out that it is the applicant who does not know it, and she never bothered to find out, and that is her own problem.

She contends further that tribunal had visited the locus in quo. The applicant did not bother to bring any witnesses, and the witnesses that she brought were from some other villages, so they were rendered irrelevant. On the other hand, she points out that she was successful because she brought in witnesses from the locale and was able to point to the truth of

the matter. She charges that it is untrue that the Ward Tribunal became witnesses on the matter, as she had brought her own witnesses.

Finally, she was adamant that whether this court will allow the application or not, she prayed for her costs.

The Counsel for the Applicant only rejoinder was on the issue of costs where he thought since there are matters of law that have been raised for consideration by the court of Appeal, then each party should bear their own costs.

I have traversed through the filed application, and affidavits both in support and against, and considered the submission by both parties. The issue before me then is whether this application is merited.

While I am aware that leave is not automatic, and that it is conditional upon the applicants raising points of grievance raising arguable issues to merit serious judicial consideration. I am well fortified by the guidance of the Court of Appeal in **Airtel Tanzania Ltd vs KMG Telecommunications Ltd**, Civil Application No 393/16 of 2021 (unreported); as it considers the conditions for granting leave to appeal,

stating that in considering applications of this nature, the Court should avoid taking on board substantive issues to preempt the merits or demerits of the intended appeal.

In my view, this is what will exactly become, if I am persuaded to take the Respondent's view while urging this Court not to consider the application. I am not supposed to dig into the issues of whether the conclusion reached by the trial tribunal and later the High Court is faulted or not. See also **Regional Manager-Tanroads Lindi vs D.B. Shapriya & Co Ltd**, Civil Application No 29 of 2012; and **Harban Haji Mosi and Anor vs Omar Hilal Seif and Anor**, Civil Reference No 19 of 1997 (unreported) which was also quoted with approval in the **Airtel Case** (supra). So despite the arguments by both parties, I am minded to focus on whether points of law presenting an arguable appeal have been raised and consider those judiciously applying this court's discretion.

In my considered view, the application has undeniably raised issues in points of law and thus presents an arguable appeal whose consideration would deserve the attention of the Court of Appeal and a certification on point of law. In my opinion, the issue is twofold, that is the failure to observe the principles of visiting the locus in quo; and the issue of

adjudging the suit over the disputed land without ascertaining the pecuniary jurisdiction while it remains 'unknown'. The certification is on the non-observance of the principle of law as per Section 64(1), (a), (b) of the Land Act, Cap 113 RE 2019 on the disposition of land.

In the premises, I find merit in the present application and I hereby grant leave to the Applicants to appeal to the Court of Appeal.

Let costs follow the event.

Ordered accordingly.

DATED at ARUSHA on the 25th of August 2023.


A.Z. BADE
JUDGE
25/08/2023

Ruling Delivered in chambers on **25th August, 2023** before counsel for the Applicants; and Respondents appearing in person.




A. Z. BADE
JUDGE
25/08/2023