

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IRINGA REGISTRY
AT IRINGA

MISC. LAND APPLICATION NO. 12 OF 2023

ATUWONEKYE MWENDA.....APPLICANT

VERSUS

HEZRON MANGULARESPONDENT

RULING

Date of the Last Order: 10.08.2023

Date of the Ruling: 01.09.2023

A.E. Mwipopo, J.

Atuwonekye Mwenda, the applicant, has filed the present application for leave to appeal to the Court of Appeal against the decision of this Court in Land Appeal No. 12 of 2022, delivered on 31st of March, 2023. The application is made by chamber summons supported by the affidavit sworn by Mr. Marco J. Kisakali, the applicant's Advocate.

The background of the case shows that the applicant sued Hezron Mangula, the respondent, in the District Land and Housing Tribunal for Njombe at Njombe in Application No. 88 of 2016, for the ownership of the piece of land located in Muungano area, Lyamkena Ward in Njombe District

and Njombe Region. The trial District Land and Housing Tribunal dismissed the application for want of merits. The applicant was not satisfied with the decision of the trial Tribunal and appealed to this Court. The High Court heard both parties and dismissed the appeal for want of merits. The applicant was aggrieved with the decision of this Court and filed the application for leave to appeal to the Court of Appeal.

On the hearing date, the applicant was represented by Mr. Marco J Kisakali, advocate, whereas the respondent appeared in person. The matter was argued through written submissions.

The applicant submitted in support of the application that it is well settled that an appeal to the Court of Appeal of Tanzania from the decision of the High Court exercising its appellate jurisdiction is not automatic. The party aggrieved must first seek leave of this honourable Court. This Court is vested with discretionary power to grant leave, however as the Court of Appeal of Tanzania expounded in the case of **British Broadcasting Corporation versus Eric Sikujua Ng'maryo**, Civil Application No. 138 of 2004, Court of Appeal of Tanzania at Dar es Salaam (unreported), such discretion must be exercised judiciously. This Court must be satisfied that the case involves a substantial question of law worth the consideration of

the Court of Appeal. The grounds raised must be of general importance, a novel point of law or show a prima facie or arguable appeal. They must not be frivolous, vexatious, useless or hypothetical. The grounds raised in paragraph 5 (a) and (b) of the affidavit met the conditions stipulated in the cited **British Broadcasting** case (supra) as the grounds involve a substantial question of law worth the consideration of the Court of Appeal, they all show prima facie appeal or arguable appeal.

It was the appellant's submission that the raised points, as found in the affidavit, are whether the omission of the trial Chairman to afford the assessors the opportunity to provide opinion in the proceedings of the trial tribunal does not vitiate proceedings as per various decisions of the Court of appeal; and whether this Court has jurisdiction to overrule and distinguish the conclusion of the Court of Appeal on identical facts and irregularity tainted in the trial Tribunal's proceedings. He said those points needed the attention of the Court of Appeal as this appellate Court departed from the position of the Court of Appeal and stated that the irregularity could be cured by section 45 of the Land Disputes Courts Act, Cap. 216 R.E. 2019. To support the position, the appellant relied on the case of **Tubone Mwambete vs. Mbeya City Council**, Civil Appeal No.

287 of 2017, Court of Appeal of Tanzania at Mbeya (unreported), which interpreted regulation 19(2) of the District Land and Housing Tribunal Regulations, 2003, and the case of **Ameir Mbarak and Azania Bank Corporation Limited vs. Edgar Kihwili [2016]1 TLR 53.**

Based on the interpretation of the Court of Appeal in the above cited cases, the applicant is of the view that where the proceedings are silent on whether the assessors were consulted to give their opinion, then the irregularity is a serious one.

In reply submission, the respondent said with regard to the first ground for leave to appeal to the Court of Appeal that the averment that the assessors gave no opinion is impertinent and thus exaggerative, frivolous, vexatious, useless and hypothetical. The respondent referred to page 4 of the trial District Tribunal's judgment where the chairman held that:-

"Having visited the site, Mr.Mwapinga and Mrs. Grace Mbwilo, assessors of this Tribunal who sat with me when this case was heard, gave their opinion in favour of the Applicant....."

The Chairperson continued to state in the judgment that:-

"I will respond to the opinion given by assessors before I conclude writing this judgment....."

The same was observed by the High Court in its judgment dated 31st of March, 2023, by Hon I.C. Mugeta J., on page 6 that:-

"On page 4 of the judgment, the learned tribunal chairperson referred to the opinion of the assessors who had opined in favour of the appellant. However, for the reasons stated on page 5 of the typed judgment, he differed with them and found for the respondent."

The respondent believed the applicant was trying to mislead the Court to do injustice against him. The applicant's assertion regarding the claims that assessors did not provide their opinion holds no water. The assessors provided their opinion pursuant to the law.

Having read the respective submissions by the parties, the trial tribunal records, and the affidavits of both parties, the issue to be determined is whether this application has merits.

The High Court has discretion to grant leave to appeal to the Court of Appeal. Section 47 (2) of the Land Disputes Courts Act, Cap. 216 R.E. 2019 provides that:-

"47 (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.”

From above cited decision, a person aggrieved by the decision of the High Court in the exercise of its appellate jurisdiction may appeal to the Court of Appeal after being granted a leave of the High Court or Court of Appeal.

Further, it is a settled principle of law that in the application for leave to appeal to the Court of Appeal, the leave to appeal may be granted where there is a point of law, the intended appeal stands a good chance of success, there is a point of public importance to be determined by the Court of Appeal, or where the grounds show a prima facie or arguable appeal. In the case of **Kadili Zahoro (Administrator of the Estate of the late Bahati Ramadhani Mponda) and Another vs. Mwanahawa Selemani**, Civil Application No. 137/ 01 of 2019 (unreported), on page 6, the Court of Appeal referred to its previous decision in the case of **Harban Haji Mosi and Another vs. Omar Hilal Seif and Another**, Civil Reference No. 19 of 1997, (unreported), where it held that:-

“Leave is granted where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceedings reveal such disturbing features as to require the guidance of the Court

of Appeal. Therefore, the provision's purpose is to spare the Court the spectra of unmeriting matter and enable it to give adequate attention to cases of true public importance."

In the case of **British Broadcasting Corporation vs. Eric Sikuja Ng'maryo** (supra), it was held that 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. Leave will not be granted where the grounds of appeal are frivolous, vexatious, useless or hypothetical. In the case of **Said Ramadhani Mnyanga vs. Abdallah Salehe [1996] TLR 74**, the Court of Appeal highlighted that:-

"For leave to appeal to be granted, the applicant must demonstrate that there are serious and contentious issues of law or fact fit for consideration of appeal."

In the present case, the applicant has raised two grounds of intended appeal to be determined by the Court of Appeal, as can be seen in paragraphs 5 (a) and (b) of the affidavit supporting this application. The grounds of appeal raised are whether it was proper for the first appellate Court to confirm the trial Tribunal's decision while records/ proceedings of the Tribunal do not show if the Chairman afforded assessors opportunity to give their opinion in the trial; and whether the first appellate Court has

jurisdiction to overrule and distinguish the decision of the Court of Appeal on the same facts on the irregularity tainted in the proceedings of the trial tribunal. It is clear from the intended grounds of appeal the applicant is saying that the High Court has vacated the position of the Court of Appeal where the trial District Land and Housing Tribunal's proceedings failed to show that the assessors were afforded an opportunity to give their opinion.

The intended grounds of appeal raised by the applicant are worthy of being considered by the Court of Appeal as they are not frivolous, vexatious, useless or hypothetical, and arguable. The grounds contain points of law requiring interpretation of principles of law set by the Court of Appeal itself.

Therefore, the application is allowed, and I grant leave to appeal to the Court of Appeal on the grounds of the intended appeal found in paragraph 5 (a) and (b) of the applicant's affidavit. Since I have granted leave to the applicant to appeal to the Court of Appeal and possibly the parties will appear before the Court of Appeal in the appeal, each party shall bear its costs of the suit. It is so ordered accordingly.



A handwritten signature in blue ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

A.E. MWIPOPO

JUDGE

01/09/2023