

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

MISC. LAND APPLICATION NO. 11 OF 2022

(C/F Land Appeal No. 84 of 2022 at the High Court of Arusha, Originated from
District Land and Housing Tribunal of Mbulu at Dongobesh in Application No. 23 of
2020)

BETWEEN

EDWARD SINO.....APPLICANT

VERSUS

MARMO LULU.....RESPONDENT

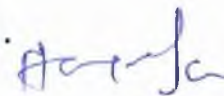
RULING

4/9/2023 & 26/9/2023.

MWASEBA, J.

This is an application for leave to appeal to the Court of Appeal of Tanzania (CAT). The applicant **Edward Sino** preferred the application under **Sections 47 (2) of the Land Disputes Courts Act**, Cap 216 R.E 2019, **Section 68 (e), Section 95 of the Civil Procedure Code**, Cap 33 R.E 2019 and **Section 5 (1) (c) of the Appellate Jurisdiction Act**, Cap. 141, R. E. 2019.

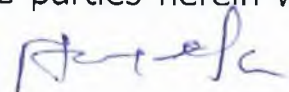
The application was supported by an affidavit sworn by the applicant himself. The respondent objected the application through a counter affidavit sworn by the respondent himself as well.



During the hearing of the application, Mr. John Lairumbe and Mr. Samwel Welwel, both learned counsels represented the applicant and respondent respectively.

Submitting in respect of the application, Mr. Lairumbe prayed to adopt their affidavit to be part of their submission. He argued further that under paragraph 6 of the affidavit supporting the application, the applicant has shown points that he is aggrieved in Land Appeal No. 84 of 2022 which was determined by Hon. Tiganga J. More to that, this court has no power to determine the alleged grounds but to see if there are points of law arguable at the Court of Appeal. He referred this court to the cases of **Coca Cola Kwanza LTD v. Charles Mpunga and 103 Others**, Civil Application No. 393/01 of 2017 (CA DSM-Ureported) and **Nurbhai N. Rattans v. Construction Energy and Environment and Another** (2005) TLR No. 2020 where the court stated that leave is granted where points of law is raised to be arguable to the Court of Appeal.

Opposing the application, Mr. Welwel submitted that based on the record of Land Appeal No. 84 of 2022, there is no arguable grounds of appeal worth to be determined by the court of appeal. He argued further that the issue of dispute of land ownership between the parties herein was



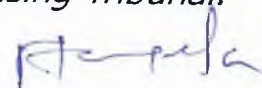
already determined in Land Case No. 19 of 1998 at DLHT of Mbulu and Later on in Appeal No. 21 of 2006 at the Court of Appeal at Dar es Salaam. It was his further submission that, in Land Appeal No. 84 of 2022 before this court at Page 6, Hon. Tiganga J. held that the matter before him was *res Judicata* as it had already been determined in previous cases mentioned herein. Thus, the issue of *res judicata* is apparent on the face of record, so he prayed for the application to be dismissed with costs.

In his brief rejoinder, Mr. Lairumbe insisted that this court has no jurisdiction to determine the grounds of appeal, this court is only supposed to determine whether the grounds are arguable worth to be determined by the Court of Appeal.

Having carefully looked at the judgment subject of the intended appeal, affidavit and submissions of both parties, the issue for determination is whether the application has merit or not.

As submitted in the affidavit supporting the application, at paragraph 6, the intended grounds of appeal are as follows:

- a. Whether the case was not proved on the balance of probability by the Respondent at the District Land and Housing Tribunal.*

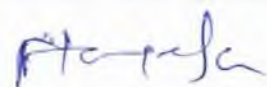


b. *Whether the mere word can prove ownership of the land as presented by the Respondent as District Land and Housing Tribunal.*

In determining whether the raised points are points of law worth to be determined by the Court of Appeal, in **Harban Haji Mosi and Another v. Omar Hilal Seif and Another**, Civil Reference No. 19 of 1997 (CA-Unreported) it held that:

"Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceedings as a whole reveal such disturbing features as to require the guidance of the Court of Appeal. The purpose of the provision is therefore to spare the Court the specter of unmeriting matters and to enable it to give adequate attention to cases of true public importance."

Looking at the intended grounds of appeal raised by the applicant, this court is of the firm view that there is no point of law raised by the appellant worth to be determined by the Court of Appeal. The applicant is only challenging whether the proof on land ownership was on the balance of probabilities, the matter which had already been discussed by this court in Land Appeal No. 84 of 2022 and confirmed the decision of



DLHT of Mbulu that the matter is *res judicata*. Thus, it is my considered view that the proposed appeal has no reasonable chance of succeeding.

All said and done, the applicants' application for leave to appeal to the Court of Appeal is hereby dismissed with costs for being non meritorious.

Ordered accordingly.

DATED at **ARUSHA** this 26th day of September, 2023.



A handwritten signature in blue ink, appearing to read "N.R. Mwaseba", is written over the printed name.

N.R. MWASEBA

JUDGE