

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB-REGISTRY OF MANYARA**

**AT BABATI**

**MISC. LAND APPLICATION NO. 44 OF 2023**

(Arising from Land Appeal No. 3 of 2022 dated 25<sup>th</sup> May 2023)

**JUMA BARAN ..... APPLICANT**

**VERSUS**

**ORI GOROJA.....RESPONDENT**

**RULING**

31/8/2023 & 5/10/2023

**BARTHY, J.**

The applicant was aggrieved with the decision of this court in Land Appeal No. 3 of 2022. The applicant intends to appeal against the decision to the Court of Appeal, hence he preferred the instant appeal under section 47(2) of the Land Disputes Courts Act [CAP 216 R.E. 2019], (the Act) section 5 (1)(c) of the Appellate Jurisdiction Act [CAP 141 R.E. 2019] and Rule 45(a) of the Court of Appeal Rules G.N No. 344 of 2019 (hereinafter referred to as the Rules), seeking for the following reliefs namely;




- 1. This court be pleased to grant leave to enable the*
- 2. applicant appeal to the Court of Appeal of Tanzania against judgment and decree of the High Court of Tanzania Manyara sub-Registry delivered by Hon. Kahyoza J in Land Appeal No. 3 of 2022 dated on 25<sup>th</sup> May 2023.*
- 3. And any other relief this honourable court deem fit and just to grant.*

The application is supported with an affidavit sworn by the applicant himself. On the other hand, the respondent lodged counter affidavit to contest the application.

The application was disposed of by written submission. Both parties appeared in person unrepresented.

In his submission in support of the application, the applicant urged the court to grant the reliefs sought, as he has advanced grounds for determination by the Court of Appeal.

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The applicant submitted that, the decision of this court in Land Appeal No. 3 of 2022 was determined basing on the fact that, the learned trial chairperson failed to obtain the opinion of the assessors who presided over the matter. Hence, this court nullified the proceedings and judgment.

The applicant maintained that; the learned trial chairperson clearly indicated to have proceeded with the matter without the aid of assessors as provided for under section 23(3) of the Act. Hence, with the demise of one of the assessors, the learned trial chairperson rightly proceeded with the matter without the aid of assessors.

The applicant maintained that there is a triable issue by the Court of Appeal of Tanzania, therefore leave should be granted.

On reply submission, the respondent contended that, the applicant has not shown any ground for determination by the Court of Appeal. He was firm this court rightly declared the proceedings of the trial tribunal a nullity.

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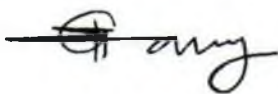
Therefore, none of the parties herein was declared a lawful owner of the suit land. He contended that what was decided by this court was a mere direction to be complied with and even the Court of Appeal would decide the same.

He added that, since the applicant has not advanced any ground for determination by the Court of Appeal the remedy is to dismiss the instant application. To prop his arguments, the respondent referred to the case of **Killo Rashid Lusewa v. Mwinjuma Hassan Killo**, Misc. Civil Application No. 6 of 2023.

Having gone through the rival submissions of the parties, the issue for determination is whether the application has merits.

As stated before, in this application the applicant is seeking for leave of this court to appeal to the Court of Appeal against decision of this court from Land Appeal No. 3 of 2022.

The requirements to seek leave of this court in exercise of its appellate or revisional jurisdiction in land matters is provided under section 47 (2) of the Act, which reads;

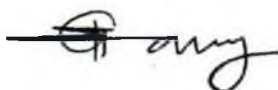
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*47 (2) A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may, with leave of the High Court or Court of Appeal, appeal to the Court of Appeal.*

There are however some conditions to be met by the applicant before this court can grant the leave to appeal. The first and foremost condition is that, the applicant must have lodged notice of intention to appeal to the Court of Appeal of Tanzania as provided for under Rule 46(1) of the Rules which reads;

*46.-(1) Where an application for a certificate or for leave is necessary, it shall be made **after the notice of appeal is lodged**. [Emphasis added].*

In the instant matter, the applicant duly lodged his notice of intention to appeal to the Court of Appeal on 2/6/2023. Copy of the said notice has been attached on the affidavit in support of the application. Hence, the first requirement has been fulfilled by the applicant.

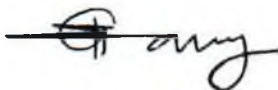
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The second requirement for the court to grant leave to appeal is that the applicant must demonstrate that there is arguable appeal before the Court of Appeal. This must be shown by presence of novel point of law of sufficient importance worthy of determination by the Court of Appeal.

This requirement was stated in the case of **Simon Kabaka Daniel v. Mwita Marwa Nyang'anyi & 11 Others** [1989] TLR 64, it was held by the court that;

*"In the application for leave to the Court of Appeal, the application must demonstrate that there is a point of law involved for the attention of the Court of Appeal.*

The similar weight was stressed in the case of **British Broadcasting Corporation v. Eric Sikujua Ng'maryo**, Civil Application No. 138 of 2004 (unreported), where the Court of Appeal insisted the leave to appeal is not an automatic right, but it is within the discretion of the court based on materials before the court. It further held that, the leave to appeal will be granted where grounds of appeal raise issues of general importance

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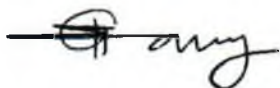
or novel point of law or where the grounds show prima facie or arguable appeal.

In the instant application, I have gone through the affidavit as well as submission in support of the instant application, the applicant is basically faulting this court for ordering a retrial basing on the ground that the learned trial chairperson did not record the opinion of assessors.

The applicant also stated, the record reveal the learned trial chairperson proceeded with the matter under section 23(3) of the Act, after the death of one of the assessor.

Basing on the above arguments, I find that there is an arguable appeal before the Court of Appeal. At this stage, an important thing to be noted is that, it is not the duty of the court to determine the merits or otherwise of the grounds of appeal intended to be dealt with by the Court of Appeal.

Consequently, I find the application to be meritorious, therefore the applicant is granted leave to appeal to the Court of Appeal of Tanzania.

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In the circumstance, I make no order as to costs.

It is so ordered.

**Dated at Babati** this 5<sup>th</sup> October 2023.



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**G. N. BARTHY**  
**JUDGE**

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Ruling delivered this 05<sup>th</sup> October, 2023 at Babati in the presence of both parties.

both

both

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