

UNITED REPUBLIC OF TANZANIA

JUDICIARY

HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

AT MOROGORO

MISC. LAND APPLICATION NO. 36 OF 2023

(Originating from Land Appeal no. 53 of 2022 High Court Morogoro)

MBWANA RASSI MBWANA APPLICANT

VERSUS

BEATRICE PHINIAS RESPONDENT

RULING

Date of last order: 25/07/2023

Date of Ruling: 29/09/2023

BEFORE: G. P. MALATA, J

This ruling is in respect to an application for leave to appeal to the court of appeal by the applicant. The application is made under section 47(2) of the Land Disputes Court Act, Cap 216 R.E 2019 and is supported by a sworn affidavit of the applicant Mbwana Rassi Mbwana. It is the applicant's prayer that, this court be pleased to grant leave to appeal to the court of appeal of Tanzania against the judgement by Hon. Chaba, J in Land Appeal no. 53 of 2022 dated 19/12/2022.

On the date fixed for hearing of this application, the applicant enjoyed the legal service of Mr. Jackson Liwewa learned counsel whereas the respondent was represented by Mr. Jovin Manyama learned counsel. The Respondent through Mr. Manyama didn't oppose the application, thus the matter was left to the applicant to provide justification for the application. Mr. Liwewa submitted that, for the application of this nature to be granted, the applicant must satisfy the court that there exists a point to be certified by this court warranting leave to appeal to the court of appeal. The applicant has deponed it in paragraph 6 of the affidavit on existence of point of law warranting grant of leave to appeal to the court of appeal.

1. Whether the first appellate court was correct in law by quashing and setting aside the trial tribunal judgement on account that, the land application was incompetent without giving directions and remedies to the parties on the dispute concerned.
2. Whether, the first appellate court was correct in law in ruling that the boundaries of the disputed piece of land were not clearly specified.

Section 47(2) of the LDCA provides that;

(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 the above provision of the law, it is apparent that leave to appeal to the court of appeal is not automatic but granted upon good ground being shown if satisfies the court, then the court will invoke its discretion mandate and grant it. Should the court find no reasons it will refuse the leave to appeal. However, as stated hereinabove all must be done judiciously, meaning that there must be a base for granting or rejecting it. It is settled law in our jurisdiction that, for leave to be granted, the applicant must demonstrate that there are serious and contentions issues of law or fact fit for consideration of appeal.

It follows that it is a requirement of the law that a party who wishes to appeal to the Court of Appeal on matters originating from the District Land and Housing Tribunal (DLHT) must first obtain leave from the High Court. The leave is however granted by the High Court upon satisfaction that there is a point of law which needs to be looked at by the Court of Appeal.

Furthermore, in the case of **British Broadcasting Corporation vs. Erick Sikujua Ng'amaryo**, Civil Application no. 133 of 2004 which at page 7 the court of appeal quoted the holding in the case of **Harban Haji Mosi & another vs. Omar Hilal & another**, Civil Reference no. 19 of 1997 (unreported) where it was held that;

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

In its decision, the court of appeal has consistently insisted on certification of point of law or legal point or point which is public significance. In the case of **Magige Nyamoyo Kisinja vs. Merania Mapambo Machiwa**, Civil Appeal no. 87 of 2018 the court of appeal had these to say;

"We must emphasize that the point to be certified by the High Court must be that of legal nature and significant to warrant decision of the court. It is

*not enough for a party in a third appeal, like in the instant appeal, to simply think the lower court is wrong in its decision to have his case heard by the Court of Appeal. Matters of law which the court is called upon to determine **must transcend the interest of the immediate parties in the appeal**. Indeed, in some cases matters of law placed before the court for determination are of public importance especially when interpretation of law is involved."*

Based on the afore stated authorities, it is crystal clear that, the above-named conditions must be met for grant of leave to the court of appeal amongst others; **one**, existence of point of law, **two**, point of public importance in the proceedings and existence of prima facie or an arguable appeal, **three**, existence of disturbing features in the proceedings, **four**, finality of impugned judgement/Ruling/Order.

That being the position of the law, I have gone through the applicant's application and the advanced reasons for leave to appeal as stated in paragraph 6 of the applicant's affidavit.

Basically, the applicant who was the respondent in the appeal is complaining that, after having set aside the decision by the DLHT for

want of descriptions of the landed property in question, this court did not further give directions and remedies to the parties on the disputed land. It seems to me that, the applicant is not challenging the court's decision but only the failure to give direction on the way forward.

That being the case, I had to go back to the judgement and verify it. In fact, it is well captured that this court reversed the DLHT's decision on the ground it proceeded to hear the case without any description of the land in dispute. Meaning that, this court did not determine the case on merits but just based on such mischief as it could have not proceeded on merits without having description thereof. As result it quashed the impugned judgement, decree and orders stemmed in land application no.75 of 2020. In other words, it meant that nothing ever been legally adjudicated by court or tribunal for the purposes of determining as to who is the rightful owner of the landed property in dispute. As such, either party who wishes to pursue it may start afresh by filing the said case but in compliance with the law including provision of better particulars of the landed property as noted by the court in the judgement sought to be appealed.

The remedy is therefore so obvious that, the matter will have to be initiated afresh in compliance with the law which demand for among

others provision of description of the landed property. Certainly, the party will have to comply with **Order VI Rules 4 and 5 of the Civil Procedure Code, Cap.33 R.E.2019**. Rule 4 provides that;

"In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence and in all other cases in which particulars may be necessary to substantiate any allegation, such particulars (with dates and items if necessary) shall be stated in the pleading."

Rule 5 provides that;

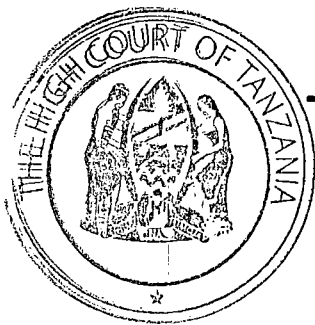
"A further and better statement of the nature of the claim or defence or further and better particulars of any matter stated in any pleading may in all cases be ordered, upon such terms, as to costs and otherwise as may be just."

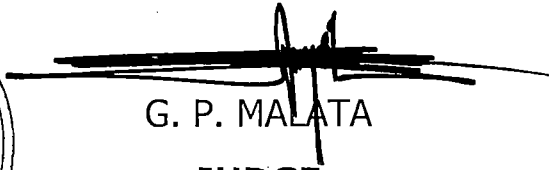
The above provision of the law will be complied together with Regulation 3(2) of the Land Dispute Courts (The District Land and Housing Tribunal) Regulations, 2003.

In the upshot, I find no point of law to be certified for determination by the court of appeal. For that reason, I dismiss the application with costs.

IT IS SO ORDERED

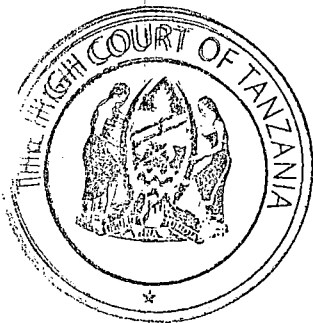
DATED at MOROGORO this 29th September, 2023.




G. P. MALATA
JUDGE

29/09/2023

RULING delivered at **MOROGORO** in Chambers this 29th September, 2023




G. P. MALATA
JUDGE

29/09/2023