

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

**MISC. LAND APPLICATION NO. 41 OF 2023**

*(Originating from Land Appeal No. 64 of 2022 of the High Court at Shinyanga)*

**LIDYA JACOB YASIN.....APPLICANT**

**VERSUS**

**NGUTU LAURENCE SIMON.....RESPONDENT**

**RULING**

*9<sup>th</sup> & 16<sup>th</sup> November, 2023*

**KAWISHE, J.:**

This ruling is on an application for leave to appeal to the Court of Appeal. It is made under section 47(2) of the Land Disputes Courts Act Cap. 216 R.E 2019 by way of a chamber summons supported by an affidavit sworn by Lidya Jacob Yasin, the applicant.

The leave sought is against the decision of this Court (Hon. Massam, J.) delivered on 16<sup>th</sup> June, 2023 in Land Appeal No. 64 of 2022 in favour of the respondent. This application was preceded by a notice of appeal lodged on 6<sup>th</sup> day of July, 2023.

The brief facts of the case according to the applicant's affidavit are that, the applicant instituted Land Application No. 44 of 2021 at Maswa

District Land and Housing Tribunal against the respondent in which the judgment was delivered in favour of the respondent. Aggrieved with the decision of the District Land and Housing Tribunal (the Tribunal), the applicant preferred an appeal to this Court, Land Appeal No. 64 of 2022 challenging the trial Tribunal's decision. The appeal was dismissed with costs on 16<sup>th</sup> day of June, 2023. The applicant now seeks to impugn the judgment of this Court, hence this application for leave to appeal to the Court of Appeal.

When this application was called for hearing the applicant was represented by Mr. Emmanuel Paul Mng'arwe learned advocate whereas, the respondent was represented by Mr. Emmanuel Rugamila learned advocate holding brief for Mr. Barack Alfred Dishon learned advocate, thus, he was instructed to proceed with the hearing.

Submitting on the grounds of this application Mr. Mng'arwe prayed that the affidavit be adopted to form part of his submission. He submitted that, appealing against the decision of the High Court is a constitutional right as per the provisions of article 13(6)(a) of the Constitution of the United Republic of Tanzania of 1977. Mr. Mng'arwe submitted further that,

the right is stressed by the word "shall", so it is a must. Hence, he prayed that this application be granted with costs.

On his part Mr. Rugamila learned advocate for the respondent argued that, the judgment delivered by this Court was right and needs no intervention of the Court of Appeal. He contended that, the application is based on paragraph 5(a), (b) and (c) of the affidavit, where the applicant claimed that, the High Court did not analyze the evidence adduced by the appellant hence reaching a wrong decision. He averred that, this Court analyzed the evidence as shown on page 5 of the judgment in Land Appeal No. 64 of 2022.

Mr. Rugamila further contended that, the High Court re-evaluated the evidence as indicated at pages 6, 7, 8 and 9 of the judgment. That, after such analysis, the High Court upheld the decision of the trial Tribunal that the respondent has right on the disputed land with a house. Mr. Lugamila, challenged the reference made to the Constitution by stating that, the learned advocate referred to the right of appeal under the article cited but did not state about the right to be heard which is required to be afforded to all parties. He maintained that, all parties were afforded right to be

heard. He concluded that, this application is wastage of the court's time, thus, he prayed that the application be dismissed with costs.

In rejoinder Mr. Mng'arwe reiterated his submission. He attacked the submission made by Mr. Rugamila by stating that, this Court did not analyse the evidence. He maintained that, at page 5 of the impugned judgment, this Court was referring to a decision of the Court of Appeal. A decision in the case of **Philipo Joseph Lukonde vs. Faraji Ally Said Civ. App. No. 74 of 2019.**

Mr. Mng'arwe further argued that, the learned counsel for the respondent said that article 13(6)(a) of the Constitution (supra) provides for the right to be heard but did not comment on the right of appeal which is provided for constitutionally. Hence, that is why the applicant is applying for leave to apply to the Court of Appeal. He prayed that, this Court be pleased to grant leave to appeal to the Court of Appeal with costs.

I have considered the affidavit filed by the applicant and the respondent's counter affidavit as well as the brief submissions from both the learned advocates for the applicant and the respondent respectively. In a point of facts, in an application of this nature, it has been held by this

court and the Court of Appeal time without number that leave will be granted only when the intended appeal has some merits whether factual or legal. In **Wambele Mtumwa Shamte vs. Asha Juma, Civil Application No. 45 of 1999 CAT** (unreported), The Court of Appeal acknowledged that:

*"The law provides no explicit factors to be taken into account in deciding whether to grant, the Court reiterated generally that leave would be granted if the intended appeal has merits whether factual or legal."*

Now the issue for determination is whether the intended appeal has some merits factual or legal. The applicant through the affidavit sworn by Lidya Jacob Yasin deponed that, paragraph 5 (a) to (c) contain issues of law and facts in respect of which leave is sought. The points are:

- (a) Whether the High Court was right in upholding the decision of the trial Tribunal by declaring the respondent the lawful owner of the disputed land while he failed to prove his case to the required standard.
- (b) Whether the High Court was right in upholding the decision of the trial Tribunal which failed to analyse and take into consideration the evidence of DW1 the Land Surveyor Officer who testified to

the effect that the land is registered land of which cannot be divided and sold prior to obtaining an approval from the Land Registry Office.

- (c) Whether the High Court was right in upholding the decision of the trial Tribunal which failed to critically analyze the water tight evidence adduced by the appellant together with her witnesses.

In considering the application, I would like to refer the grounds for the application for leave to appeal which were set out in the case of **Sango Bay vs. Dresdner Bank [1971] EA 17** where Spry V-P held that:

*"As I understand it, leave to appeal from an order in civil proceedings will normally be granted where prima facie it appears that there are grounds of appeal which merit serious judicial consideration".*

Further, in the case of **Rutagatina C. L. vs. The Advocates Committee and Another, Civil Application No. 98 of 2010** (unreported), the Court of Appeal observed that:

*"Needless to say, leave to appeal is not automatic. It is within the discretion of the court to grant or refuse leave. The discretion must; however be judiciously exercised and on the materials before the court. As a matter of general principle, 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 (see: **Buckie v Holmes (1926) ALL E. R. 90** at page*



91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted."

From the position above, the Court of Appeal in **Lightness Damian & Others vs Said Kasim Chageka (Civil Application 450 of 2020) [2022] TZCA 713** (18 November 2022) observed that:

*"...it is clear that the learned judge considered the grounds for the application for leave and made a determination whether or not they were meritorious having regard to the manner the learned judge had dealt with them in the judgment sought to be appealed against. In the light of the above guidance, the grounds need not only be grounds of appeal but they may be arguable issues which attract the Court's attention for having them put in proper legal perspectives."*

From the foregoing reasons, I agree with Mr. Mng'arwe that this application has merits. Therefore, the application for the leave to appeal to the Court of Appeal of Tanzania is hereby granted.

No orders to as costs.

It is so ordered.

**DATED** at **SHINYANGA** this 16<sup>th</sup> day of November, 2023.



**E.L. KAWISHE**  
**JUDGE**

**Court:** Ruling delivered in Chambers this 16<sup>th</sup> day of November, 2023  
in the presence of Mr. Emmanuel Rugamila learned counsel for the  
respondent and in the absence of the applicant.



A handwritten signature in blue ink, which appears to read "E.L. Kawishe", enclosed within an oval-shaped scribble.

**E.L. KAWISHE**  
**JUDGE**  
**16/11/2023**