

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**MBEYA DISTRICT REGISTRY**  
**AT MBEYA**  
**MISC. LAND APPLICATION NO 42 OF 2023**  
**(Arising from the Judgment of the High Court of Tanzania at Mbeya in**  
**Land Appeal No. 122 of 2022)**

**FAINES NDONGOLE..... APPLICANT**

**VERSUS**

**JOSEPH JONH MLIGO.....1<sup>ST</sup> RESPONDENT**

**FESTO KADEGE MSIGWA.....2<sup>ND</sup> RESPONDENT**

**RULING**

25 October 2023 & 09 November 2023

**SINDA, J.:**

The applicant seeks leave to appeal to the Court of Appeal of Tanzania (the **CAT**) against the decision of this Court (Ngunyale, J.) in Land Appeal No. 122 of 2022. The application is made under section 47 (2) of the Land Disputes Courts Act, Cap. 216 R.E. 2019 ( the **LDCA**). The application is supported by the sworn affidavit of Ezelina D. Mahenge, counsel for the applicant. The respondents filed a joint counter affidavit in reply to oppose the application.

The brief facts of the case are the respondents filed Applications No. 231 and 232 at the District Land and Housing Tribunal of Mbeya at Mbeya (the **Trial Tribunal**) against the applicant and Sophia Mbola Moses (not part of this appeal) over a parcel of land measuring six acres located at Mwashoma village, Tembela ward in Mbeya Rural District (the **Suit Land**). It was alleged that the applicant trespassed on the Suit Land, claiming that she was the rightful owner of the Suit Land, which was given to her by her deceased father. The two applications were consolidated and determined together by the Trial Tribunal in favour of the respondents. The applicant, being aggrieved by the judgment and decree of the Trial Tribunal, successfully appealed before this Honourable Court. Hence, this application.

The applicant's grounds for leave are reproduced hereunder:

1. That, the decision of this Court based its findings on the contradictory evidence of the respondents, which affected the root of the case hence the decision was unfair; and
2. That this Court misapprehended the evidence on the record. As a result, it made a wrong decision on the issue affecting the applicant's ownership of the property in question.

When the matter came for hearing of this application on 25 October 2023, the applicant was represented by Ms. Ezelina Mahenge, learned advocate assisted by Ms. Emilia Chalamila, learned advocate. The respondents appeared in person, unrepresented.

Ms. Chalamila prayed for the Court to adopt the contents of the chamber summons and the affidavit as part of her submission.

On the first ground of appeal, Ms Mahenge submitted that the respondent's evidence was contradictory. She referred the Court to page 69 of the typed Trial Tribunal proceedings (the **Proceedings**) where the witness Sophia Mbola Moses (**SU4**) informed the Trial Tribunal that her father-in-law gave her the farm in 1990. She further stated that on page 74 of the Proceedings, the witness Bahati Lukas Mbilinyi (**SU5**) testified that Moses Ndongole, the late husband of SU4 told SU5 that he was given the farm by his father from 2008 to 2017. This is contradictory to what SU4 informed the Trial tribunal.

Ms. Mahenge further submitted that on page 29 of the Proceedings, the first respondent testified that he questioned two neighbours on the ownership of the Suit Land, Bahati Sanga (**SM3**) and the second respondent. She added that the second respondent said the Suit Land belongs to SU4. She argued that the evidence is contradictory because the first respondent testified that he bought the Suit Land on 25 October 2017, while the second respondent testified that he bought the Suit Land on 10 August 2018. She further argued how the second respondent could be the neighbour of the first respondent while the first respondent was not there when the second respondent bought the land in 2018.

Turning to the second ground of appeal, this Court misapprehended the evidence on record. Ms. Mahenge submitted that this Court did not

properly evaluate the evidence when the applicant invited the Court to assess what transpired in the Trial Tribunal. She added that the applicant had strong evidence compared to the respondents. She relied on the case of ***Hemed Said vs Mohamed Mbiru*** TLR 1984 on page 113 to support her argument.

In reply to the submission, the first and second respondent both urge this Court to consider what they stated in their joint counter affidavit. The second respondent further disputed what was stated by Ms. Mahenge that the evidence is contradictory because the first applicant was the first to buy the Suit Land in 2017. The second respondent bought the Suit Land in 2018. The second respondent submitted that the farm that the second respondent owned when the first respondent went to inquire the second respondent and SM3 about the ownership of the Suit Land is different from the Suit Land. He bought the Suit Land later in 2018. He added that Ms. Mahenge misdirected herself.

In rejoinder, Ms. Chalamila submitted that the applicant is before this Court to pray for leave to appeal to the CAT and not to argue on the appeal.

In relation to the respondent's submission in their joint affidavit that all the issues raised by the applicant are not on point of law, the counsels for the applicant argued that section 47(2) of the LDCA does not put a mandatory requirement for the applicant to advance grounds on point of law. The counsels referred to the case of ***Faustina Kanyasa vs. Neva***

**Kanyasa and another**, Misc. Land Application No 108 of 2016 (High Court at Mbeya, unreported) to support their argument.

I have considered the instant application, the grounds in support thereof, the affidavit sworn by the applicant's counsel, the joint counter affidavit, the able submissions of parties, the record of this application and the law.

Section 47 (2) of the LDCA provides as follows:

*"(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."*

The applicant invokes this foregoing provision of the LDCA and seeks leave to appeal to the CAT. This Court has been moved to determine whether the arguments raised by the applicant are worth consideration by the CAT.

It is settled law that leave to appeal to the CAT is granted only when the intended appeal has some merits, factual or legal. See **British Broadcasting Corporation vs Erick Sikuju Ng'maryo**, Civil Application No. 138 of 2004 (CAT Dar es Salaam, unreported), **Rutagatina C.L vs The Advocates Committee & Another**, Civil Application No. 98 of 2010 (CAT, unreported) and **Lightness Damian & Others vs Said Kasim Chageka**, Civil Application No. 450/1 of 2020 (CAT at Dar es Salaam, Tanzlii).

The CAT gave the test for granting leave to appeal to the CAT in the case of ***Lightness Damiani and 5 Others vs Said Kasim Chageka*** (supra) whereby it stated that:

*"In the light of the above stance of the law, and with respect to the learned judge, it seems clear to us that all that applicants are required to do in applications of this kind is **simply to raise arguments whether legal or factual which are worth of consideration by the Court**. Once they pass that test, the court is obligated to grant leave to appeal. It is not the duty of the judge to determine whether or not they have any merit."*

In the case of ***British Broadcasting Corporation vs Erick Sikujua Ng'maryo***, (supra) the CAT also stated 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 judiciously exercised and on the materials before the court. As a matter of general principle, **leave to appeal will be granted where grounds of appeal raise issues of general importance or a novel point of law or where the grounds show a prima facie arguable appeal** (see: ***Buckle vs Holmes*** (1926) ALL ER. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted."*

The issue for consideration now is to determine whether or not the arguments raised by the applicant in support of the application for leave

to appeal to the CAT are pertinent questions for determination by the CAT and meet the conditions explained in the cases above.

The arguments raised by the applicant for determination by CAT are **first**, that this Court based its finding on contradictory evidence and **second**, that this Court misapprehended the evidence on record in reaching its decision. In my opinion, this is not supported by the evidence on record.

In my view, this Court considered all the evidence on record and did not misapprehend or base its findings on contradictory evidence in any way. This view is based on the fact that the presiding judge noted that this Court, as the first appellate court, had the power to re-evaluate all the evidence on record. It is on the Court records that in determining the appeal, this Court re-evaluated all evidence on record in reaching its decision. This is reflected on pages ten (10) to fourteen (14) of the first appellate court Judgment (the **Judgment**). The Judgment of this Court considered the evidence of SM1, SM2, SM3, SU1, SU3, SU4 and SU5 and the exhibits tendered before reaching its decision and dismissing the appeal. I believe the Judgment was based on the evidence on record.

For the preceding reasons, it is my considered view that the present application does not meet the test established by the CAT in the cases of ***British Broadcasting Corporation vs Erick Sikujua Ng'maryo***, (supra) and ***Lightness Damiani and 5 Others vs Said Kasim Chageka*** (supra) by reason that it has not demonstrated to the Court's satisfaction the existence of severe issues of law or fact which are worth consideration by the CAT on appeal. I, therefore, do not grant leave.

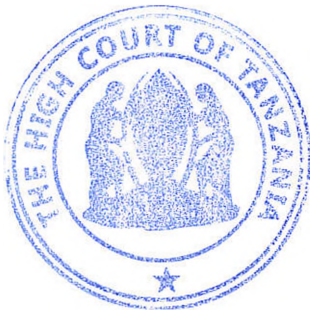
The application is without merit. I hereby dismiss the application. No order as to cost is made.


The right of appeal was explained.

DATED at MBEYA on this 09<sup>th</sup> day of November 2023.

  
**A. A. SINDA**  
**JUDGE**

The Judgment is delivered on this 09<sup>th</sup> day of November 2023 in the presence of the applicant, represented by Ms. Ezelina Mahenge, and the respondents who appeared in person.



  
**A. A. SINDA**  
**JUDGE**