

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

MBEYA DISTRICT REGISTRY

MISC. LAND APPLICATION NO 17 OF 2023

**(Arising from the decision of the High Court of Tanzania at Mbeya in Land
Appeal No. 50 of 2022)**

ISRAEL MUJUNI MAMBO.....1ST APPLICANTS

ISACK B. MAMBO.....2ND APPLICANTS

VERSUS

MTWA MERIMERI MHEWA.....1ST RESPONDENTS

SINGA LAISON DUWILA.....2ND RESPONDENTS

RULING

Date: 30 October 2023 & 07 November 2023

SINDA, J.:

The applicants seek leave to appeal to the Court of Tanzania (the **CAT**) against the decision of this Court (Ngunyale, J.) in Land Appeal No. 50 of 2022. The application is made under section 47 (2) of the Land Disputes Courts Act Cap. 216 R.E. 2019 (the **LDCA**) and section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2019 (the **AJA**). The application is supported by the affidavit of Ladislaus Rwekaza, counsel for the applicants.

The brief facts of the case are the applicants instituted Land Application No. 150 of 2020 at the District Land and Housing Tribunal for Mbeya at

Mbeya (the **Trial Tribunal**) against the respondents for the Trial Tribunal to declare that the respondents are trespassers on PML001418SWZ. The first applicant was claiming exclusive ownership of PML001418SWZ. The second applicant was claiming ownership of PML001558SWZ. The Trial Tribunal decided in favour of the applicants.

The Respondents were dissatisfied with the decision of the Trial Tribunal and appealed to this Court through Land Appeal No. 50 of 2022. The appeal was heard. Before the judgment was delivered, this Court suo motto raised an issue that the second applicant's evidence was not seen on the court records. The Court ordered the parties' counsels to address the said anomaly. This Court delivered its ruling on 6 March 2023 (the **Ruling**) and nullified the proceedings, judgment and decree of the Trial Tribunal. The applicants were dissatisfied with the decision and thus lodged this application.

The applicant's grounds for leave are reproduced hereunder:

1. Whether the first appellate court was correct to make a finding that the first applicant should commence a fresh application as the agent of the second applicant without considering the first applicant's ownership of PML001418SWZ;
2. Whether the first appellate court was correct to hold that the first applicant had no locus standi to institute the case on behalf of the second applicant despite the first applicant holding power of

attorney for the second applicant and having separate exclusive ownership of the PML001418SWZ;

3. Whether the first appellate court was correct to hold that the power of attorney ought to be reflected on the title of the case without citing any authority demanding so;
4. Whether the first appellate court was correct to nullify the proceedings, judgment and decree in Land Application No. 150 of 2020 on the ground of defective power of attorney while the said power of attorney followed all the requirements and procedures;
5. Whether the appellate court was correct to hold that in Exhibit P2 there was nowhere indicated that the second applicant gave the first applicant power of attorney while Exhibit P2 was clear on the matter; and
6. Whether the appellate court was correct to hold that PML001418SWZ was not an issue while the same was also among the subject matter of the dispute.

When the matter came for hearing of this application on 30 October 2023, the applicants were represented by Ms. Jalia Hussein, learned advocate. The respondents were represented by Mr. Kamru Habib, learned advocate assisted by Ms. Jenifer Biko, learned Advocate.

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

Submitting on the first ground of appeal, Ms. Hussein submitted that this Court was not correct to decide that the first applicant should commence a fresh application as the agent of the second applicant because the ownership of PML001418SWZ by the first applicant was not contended. She urged this Court to grant leave to appeal to CAT. She relied on the case of ***British Broadcasting Corporation vs Erick Sikujua Ng'maryo***, Civil Application No. 138 of 2004 (CAT, Dar es Salaam, unreported) where the CAT referred to **Harban Haji Mosi & Shauri Haji Mosi vs Omar Hilal Seif & Seif Omar**, Civil Reference No. 19 of 1997.

Concerning the second ground of appeal on locus standi, Ms. Hussein further submitted that the second applicant gave the first applicant power of attorney to appear in civil and criminal proceedings on behalf of the second applicant. Therefore, the first applicant had locus standi to sue on behalf of the second applicant at the Trial Tribunal.

Submitting on the third ground of appeal, Ms. Hussein submitted that the appellate court erred in dismissing the appeal on the ground that at the Trial Tribunal in the title, it was to show that the first applicant is representing the second applicant through a power of attorney which was not a requirement of the law.

On the fourth ground of appeal, Ms. Hussein submitted that this Court was not correct to nullify the proceedings and judgment on the ground that the power of attorney was defective while the power of attorney was per the law. She argued that this Court should have requested additional

documents if he thought the evidence of the second applicant was insufficient.

She argued that this Court should have requested additional documents if the evidence of the first applicant was insufficient. She added that according to Order XXXIX Rule 27 (1) (b), the appellate court was to issue an order to the Chairman of the Trial Tribunal for additional evidence. Ms. Hussein referred to ***Kulwa Ramadhan Nasoro vs Republic***, Criminal Appeal No. 94 of 2022 (High Court at Morogoro, unreported), where the High Court referred to the case of ***Siza Patrice vs Republic***, Criminal Appeal No. 19 of 2010, ***Justus Ntibandetse vs. CRDB Bank Plc***, Misc. Civil Application No. 41 of 2021 (High Court at Moshi, unreported), where the Court referred to ***British Broadcasting Corporation vs Erick Sikujua Ng'maryo***, (supra) and ***Kaimu Said vs Republic***, Criminal Appeal No. 391 of 2019 (CAT at Mtwara, unreported) to support her arguments.

Turning to the fifth ground of appeal, Ms. Hussein stated that the second applicant gave the first applicant power of attorney to lodge the application at the Trial Tribunal on behalf of the second applicant. She stated that Exhibit 2 was straightforward, as shown on page 6 of the Ruling.

Submitting on the sixth ground of appeal, Ms. Hussein submitted that the Hon. Judge of the first appellate court erred in law and fact to nullify the proceedings, judgment and decree of the Trial Tribunal for failure to consider PML1001418SWZ, which was owned by the first applicant

exclusively and which did not need a power of attorney. She referred to the cases of ***The Registered Trustees of Biafra Secondary School and Usafirishaji Mikoani Union Ltd vs Enock Daniel Makenge T/A Unilife Group Investment***, Misc. Civil Application No. 575 of 2019 (High Court at Mbeya, unreported) and ***National Bank of Commerce vs. Maisha Musa Uledi (Life Business Centre)***, Civil Application No. 410/07 of 2019 (CAT at Mtwara, unreported) to support her arguments.

In reply to the submission, Mr. Kamru submitted that the appeal in the first appellate court was not listened on merit. The issue of the power of attorney was raised suo moto by the Court, and parties were asked to respond on the power of attorney and the way forward. He submitted that the discrepancies in the power of attorney led the Court to nullify the proceedings, orders and decree of the Trial Court, as illustrated on pages 6 to 7 of the Ruling.

Mr. Kamru opposed the application and submitted that all the applicant's six grounds of appeal did not meet the requirements of the law for leave to be granted and urged the Court to dismiss the application. He relied on the case of ***British Broadcasting Corporation vs Erick Sikujuwa Ng'maryo*** (supra) to support his argument.

Mr. Kamru submitted that in an appeal stage if it shows that proceedings of the Trial Tribunal are irregular, the Court does not decide the case on merit. The remedy is a re-trial or any other part of the case to start a fresh suit because the proceeding was irregular.

About the first and third grounds of appeal, he contended that the proceeding was irregular because the pleadings of the Trial Tribunal did not reflect that the first applicant was suing as an attorney of the second applicant. He further contended that generally, the applicant must stand on himself, but there are exceptions. He added the procedures must be followed for a person to institute a suit on behalf of someone else. He supported his argument by referring to the case of ***Najma Hassanali Kanji (suing through Mohamed Hassanali Kanji, by power attorney) vs Ramadhani Hamisi Ntunzu***, Land Case No. 93 of 2016 (High Court at Dar es Salaam, unreported) and ***James the Fumke Gwagilo vs. The Attorney General*** (Civil Appeal No. 67 of 2001) [2003] TZCA 24.

On the second and fifth grounds of appeal, Mr. Kamru submitted that the first applicant had no locus standi to sue on behalf of the second applicant because a power of attorney did not meet the requirements of the law.

Turning to the sixth ground of appeal, Mr Kamru submitted that a power of attorney showed that the second applicant is the owner of PML001418 SWZ. He did not know why the applicant said PML001418SWZ belonged to the first applicant.

In opposing that, the first appellate court was supposed to evaluate the evidence on record and call for new evidence. Ms. Biko submitted that the application filed at the Trial Tribunal was incomplete, and the Court had

nothing to evaluate. The Applicant was to follow the procedure as directed by this Court to get justice.

In rejoinder, Ms. Hussein stated that the respondent advocate submitted that the power of attorney by the second applicant was defective, but he did not cite any law. She stated that the power of attorney was properly registered with the Registrar of Lands. She added that the first applicant had locus standi because he had a registered power of attorney to institute the matter.

She further submitted that the first appellate court was not correct to nullify the proceedings, judgment and decree of the Trial Tribunal. The appellate court was to request additional evidence or issue an order to the Trial Tribunal for the chairman to include the missing evidence as per the Ruling.

I have considered the instant application, the grounds in support thereof, the affidavit sworn by the applicant's counsel, 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."

In addition, section 5 (1) (C) of the AJA provides as follows:

"5 (1) (C) In civil proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal with the leave of the High Court or of the Court of Appeal, against every other decree, order, judgment, decision or finding of the High Court."

The applicants invoke the foregoing provisions of the LDCA and the AJA and seek 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 factual or legal merits. See ***British Broadcasting Corporation vs Erick Sikujua Ng'maryo*** (supra), ***Rutagatina C.L vs The Advocates Committee & Clavery Mtindo Ngalapa***, Civil Application No. 98 of 2010 (CAT, Dar es Salaam, unreported), ***Lightness Damian & Others vs Said Kasim Chageka***, Civil Application No. 450/1 of 2020 (CAT at Dar es Salaam, Tanzania) and ***Jireys Nestory Mutalemwa vs Ngorongoro Conservation Area Authority***, Civil Application No 154 of 2016 (CAT Arusha).

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 Sikuju Ng'maryo*** (supra), the CAT 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."*

In the case of ***Jireys Nestory Mutalemwa vs Ngorongoro Conservation Area Authority*** (supra), the CAT further stated that:

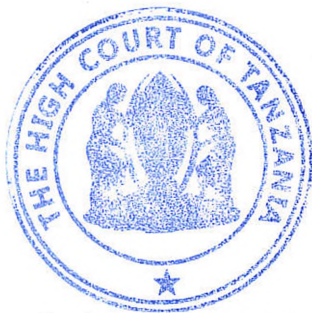
"Similarly, in applications of this nature, it is a well-established principle of law that the Court is not expected to determine the merits or otherwise of the substantive issues before the appeal itself is heard..."

The issue for consideration now is to determine whether or not the arguments raised by the applicants 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.

I have analysed the grounds of appeal raised by the applicant's counsel, particularly in paragraphs 14 (a) to (f) of the affidavit and the brief submissions of both counsels. I believe the present application raises matters worth considering by the CAT as established in the cases mentioned above.

The application is merited. I therefore grant leave to appeal to the CAT. No order as to cost is made.

DATED at MBEYA on this 07th day of November 2023.



A. A. Sinda
A. A. SINDA
JUDGE

The Judgment is delivered on this 07th day of November 2023 in the presence of the applicants represented by Ms. Consesa Desderi.

A. A. Sinda
A. A. SINDA
JUDGE