

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA SUB REGISTRY
AT ARUSHA**

MISC. LAND APPLICATION NO 24 OF 2023

(C/f High Court Land Appeal No 44 of 2022, Originating from the decision of Karatu
District Land and Housing Tribunal, Land Application No 87 of 2017)

JOHN GWANGWAYAPPLICANT

VERSUS

PATRID HHAWU DITORESPONDENT

RULING

04th September & 13th November, 2023

KAMUZORA, J.

The Applicant brought this application under section 47(2) of the Land Disputes Courts Act Cap 216 R.E 2019, section 5(1) (c) of the Appellate Jurisdiction Act Cap 141 RE 2019 and Rule 45 of the Tanzania Court of Appeal Rules seeking for leave to appeal against the decision of this court in Land Appeal No. 44 of 2022 delivered on 26th January, 2023. The application is supported by an affidavit sworn by John Gwangway, the Applicant herein. The Respondents on the other side did not contest the Applicant's application for he did neither file counter affidavit nor submission opposing the application.

Briefly, the Applicants herein instituted a land matter before the District Land and Housing Tribunal (DLHT for Karatu claiming that the Respondent herein trespassed into his land and damaged his properties by cutting down trees. The decision therein was in favour of the Respondent and the Applicants successful appealed to this court as this court upheld the trial tribunal's decision.

Aggrieved by the decision of this court, the Applicant desires to appeal to the Court of Appeal hence, this application seeking for leave to appeal as required by the law. When the matter was called for hearing parties appeared in person and the Respondent informed this court that he intended not to contest the application. The Applicant was allowed to defend his application by way of written submission.

Although this application is uncontested, it is the principle of law that a party seeking for leave is bound to demonstrate to this court that there is legal issue that need to be determined by the Court of Appeal. This court is therefore bound to assess the grounds deposed by the Applicant in his affidavit and as well the submission thereto and see if they satisfy the conditions set for the grant of leave.

As per the affidavit in support of application the Applicant intends to seek appeal to the Court of Appeal on the following grounds;

"High Court Failure to analyse evidence, examine evidence and compromising evidence, denied with the right of being heard fairly, and that the matter had no second party, yet the court failed to grant the Applicant with right of ownership"

In his submission in support of application the Applicant referred paragraph 4 of the affidavit and submitted that there was failure by the High court in analysing the evidence which were highly credible, uncontested and which was in support of the allegation. Pointing at paragraph 5 of the affidavit, the Applicant argued that, both the trial tribunal and this court denied him the right of being heard after disregarding his documentary evidence tendered by him before the trial tribunal. That, also the trial tribunal declined from visiting the locus in quo where additional evidence would have been obtained. That, this court acted in bias by stating that the Appellant did not tender any documentary evidence.

The Applicant added by referring paragraph 7 of the affidavit that, the matter before the trial tribunal was uncontested by the Respondent for the Respondent did not file written statement of defence and yet, the matter was ruled in his favour. The Applicant believes that for his right to be protected leave be granted for him to appeal to the Court of Appeal.

It is a settled principle that an application for leave to appeal to the Court of Appeal is not automatic, it may only be granted upon establishing certain conditions. Therefore, even if the application is uncontested, still a party seeking for leave has duty to demonstrate that there is need for leave to be granted. Section 5(1) (c) of the Appellate Jurisdiction Act does not provide for the conditions to be considered by the Court in granting leave to appeal to the Court of Appeal. However, the Court of Appeal in number cases has set clearly the circumstances under which leave to appeal to the Court of Appeal can be granted. In **Harban Haji Mosi and Another Vs. Omar Hilal Seif and Another**, Civil Reference No. 19 of 1997 [2000] TZCA 11 Tanzlii it was held that:

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

See, also, the Court of Appeal decision in **Rutagatina C. L Vs. The Advocate Committee & another**, Civil Application No 98 of 2010 TZCA 2011 Tanzlii which cited with approval its own decision in **British Broadcasting Corporation vs. Erick Sikujua Ng'maryo**, Civil Application No. 138 of 2004. Where it held 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: **Buckle vs. 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 foregoing quoted decision, it is important to note that a party seeking for leave has to demonstrate that there are issues of general importance or a novel point of law or that the grounds of appeal show a prima facie or arguable appeal. In doing so, the court will refrain from discussing the merits of the grounds of appeal referred when seeking leave to appeal instead, this court will only to consider whether the proposed grounds raise issues of general importance or a novel point of law or show a prima facie or arguable appeal. See, the decision in **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo [supra]**.

In the matter at hand, the Applicant alleges three issues in supporting his application for leave to appeal to the Court of Appeal; one that the High Court failed to analyse and examine evidence, two,

that he was denied right to be heard by the tribunal and this court and three, that he was denied right while no defence was filed by the Respondent.

Starting with the ground that the high court failed to analyse evidence, I find this ground wanting. The records are clear as this court at page 9 to 11 exercised its duty as first appellate court by conducting a fresh evaluation of the evidence. It went on by assigning reasons for each point raised by the appellant/Applicant herein thus, nothing relating to evaluation evidence need to be addressed by the Court of Appeal.

On the second ground the Applicant alleged that he was denied right to be heard. He claimed that his documentary evidence was not considered by both the trial tribunal the high court, I find the same also wanting. There is no doubt that before the trial tribunal and before this court the Applicant appeared and defended his case. Before this court, the Applicant raised and argued ground related to non-consideration of his documentary evidence. This court upon perusal to the record was satisfied that no document was tendered by the Applicant in support of his case. It is unfortunate that the Applicant while arguing this application was unable to specifically state the nature of the document he was referring to and the date it was tendered or specifically refer the

page in the proceedings showing that there were documents tendered but disregarded by the trial tribunal and this court in their determination. His blanket claim that his documentary evidence was not considered cannot be construed as constituting issues of general importance or a novel point of law that need determination by the Court of Appeal.

On the argument that he was prejudiced by the trial tribunal's failure to visit the locus in quo affected, I find that the same is not sufficient ground for the grant of leave. This court made a though and clear analysis of that fact and was satisfied such failure cannot be blamed on the trial tribunal rather the Applicant himself. That being matter of fact which was well pondered, in my view, it does not raise issues of general importance or a novel point of law that need determination by the Court of Appeal.

On the third ground that the Applicant was denied right while no defence was filed by the Respondent, this court find the same to be baseless. There is no principle which says that where no defence is entered in civil case, a complainant should be declared a winner. The Applicant did not point out if there is any law that was offended by the trial tribunal or this court which need intervention by the Court of Appeal. That being the case, this ground cannot stand in granting leave for the Applicant for appeal to the Court of Appeal.

In the upshot, this court is of the firm position that there is no point of law or matter of sufficient importance raised by the Applicant worth to be determined by the Court of Appeal. The application is therefore devoid of merit and the same is hereby dismissed with costs.

DATED at **ARUSHA** this 13th day of November, 2023




D.C. KAMUZORA
JUDGE