

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SONGEA SUB - REGISTRY

(LAND DIVISION)

AT SONGEA

MISC. LAND CASE APPLICATION NO. 17 OF 2023

*(Originating from the decision of the Resident Magistrate Court of Songea at Songea,
(with extended jurisdiction) in Land Appeal No. 01 of 2022)*

NEPOMOCK ALPHONCE MAHUWI 1ST APPLICANT
TASILO JOSEPH MAHUWI 2ND APPLICANT
EDWINA ALPHONCE MAHUWI 3RD APPLICANT
AMARIA ALPHONCE MAHUWI 4TH APPLICANT
WALTER ALPHONCE MAHUWI 5TH APPLICANT
NEEMA LAURENT MAHUWI 6TH APPLICANT
ALPHONCE EDWARD MAHUWI 7TH APPLICANT
NUHU APLIAH MAHUWI 8TH APPLICANT
LUKRESIA ALPHONCE MAHUWI 9TH APPLICANT
MAKRINA ALPHONCE MAHUWI 10TH APPLICANT

VERSUS

CHESCO BONONI MBILINYI RESPONDENT

RULING

Date of last Order: 29/11/2023

Date of Ruling: 13/12/2023

U. E. Madeha, J.

It is worth considering the fact that, this is an application brought by the Applicant seeking for an order of a leave to appeal to the Court of Appeal of Tanzania against the judgment of the Resident Magistrate Court of Songea at Songea (with extended jurisdiction) in Land Appeal No. 01 of 2022.

Basically, the application was made by way of chamber summons under section 5 (1) (c) of the *Appellate Jurisdiction Act* (Cap. 141, R. E. 2019) and section 47 (2) of *The Land Disputes Courts Act* (Cap. 216, R. E. 2019) and it is supported by an affidavit sworn by the first Applicant on behalf of the other Applicants.

When the application was called for the hearing on 29th November, 2023, the Applicants enjoyed the legal services of Mr. Edson Mbogoro, the learned counsel whereas Mr. Eliseus Ndunguru, the learned counsel appeared for the Respondent.

At the outset, Mr. Eliseus Ndunguru who was holding brief for Mr. Sedeni Mponda, the learned counsel for the Respondent, informed this Court that, the Respondent has not filed counter

affidavit and he has neither intention to file it nor to resist the application.

Mr. Edson Mbogoro, the learned counsel for the Applicants submitting in support of the application argued that the Applicants are dissatisfied with the decision made in Land Appeal No. 01 of 2023 and they intend to appeal to the Court of Appeal of Tanzania. He went on submitting that, this application is made for an order for leave to file appeal to the Court of Appeal of Tanzania as required by the law. He added that, even though the Respondent does not resist the application, the Applicants are duty bound to highlight the points of law or fact which the Court of Appeal will be invited to revisit.

Mr. Mbogoro stated that, as deponed under paragraph six of the affidavit sworn in support of the application, paragraph six of the affidavit sworn in support of the application, there are two grounds of which they intend to be revisited by the Court of Appeal. The two grounds are; **One**, whether in the absence of the proof of fraud, documentary proof of ownership of land may be overturned by oral evidence and **two**, is whether the Court was correct in deciding the appeal by using one ground out of the four

grounds of appeal found in the Respondent's memorandum of appeal.

On the first ground, Mr. Mbogoro contended that, before the District Land and Housing Tribunal, the Applicant tendered ten (10) title deeds of Customary Rights of Occupancy which covers the disputed land. He contended that, before the trial Tribunal, the Respondent did not allege fraud on the said title deed and the Tribunal decided in favor of the Applicants basing on that title deed but on appeal that decision was overturned.

On the second ground, Mr. Mbogoro submitted that the, Resident Magistrate Court with extended jurisdiction erred in fact and in law by deciding only one ground of appeal out of five grounds which the Respondent filed before the Court. He submitted that, the Applicants seeks for the for an order for leave to appeal to the Court of Appeal of Tanzania to rectify this error which they believe to have occasioned the miscarriage of justice.

As stated earlier herein above, the Respondent never resisted prayers sought by the Applicants and he left the matter in the hands of this Court.

It is important to note that, in applications for leave to appeal to the Court of Appeal, this Court only looks on whether the proposed grounds of appeal meet the minimum requirements of an arguable case. It does not sit to assess the correctness or otherwise of the impugned decision. See the decision of this Court in the case of **Narender Reddy Kolampally v. Ramesh Babu Nimmaguda & Another**, Misc. Civil Application No. 18 of 2022 (unreported). Also, dealing with an application of this nature in the case of **Saidi Ramadhani Mnyanga v. Abdallah Salehe** (1996) TLR 74, the Court has this to state:

"For a leave to appeal to be granted the applicant must demonstrate that there are serious and contentious issues of law or fact fit for consideration by the Court of Appeal".

Having passed through the submissions made by the learned Counsel from both parties, the issue at hand is whether the proposed grounds of appeal are worthy for consideration by the Court of Appeal.

Looking at the proposed grounds of appeal the issue is whether they meet the minimum requirements for an appeal. Having made a keen glance over the two proposed grounds of appeal, I find they meet the minimum required standards worthy of consideration by the Court of Appeal of Tanzania.

In the final event, this application is allowed. To be precise, leave to appeal to the Court of Appeal of Tanzania is granted on the following intended grounds of appeal:

- i. Whether in the absence of the proof of fraud, documentary proof of ownership of land may be overturned by oral evidence.
- ii. Whether in law the Court properly determined the appeal by deciding the appeal using only one ground out of the five grounds of appeal.

I give no order to the costs. It is so ordered.

DATE and **DELIVERED** at **SONGEA** this 13th day of December, 2023.



A blue ink signature of U. E. Madeha, written in a cursive style.

U. E. MADEHA

JUDGE

13/12/2023

COURT: Ruling is delivered in the presence of Mr. Mbogoro, the Applicant's' counsel and in the absence of the Respondent. The Respondent to be notified.



A blue ink signature of U. E. Madeha, written in a cursive style.

U. E. MADEHA

JUDGE

13/12/2023