

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA

MISC. LAND APPLICATION No. 69 OF 2023

(Arising from the Land Appeal No. 27 of 2023 of the High Court of Tanzania Originating from Land Case No. 73 of 2015 of the District Land and Housing Tribunal of Mwanza at Mwanza)

RIDHIWANI IDD MACHOMBO----- 1st APPLICANT
RAMADHANI JUMA-----2nd APPLICANT

VERSUS

ADIJA LUKONGE @KHADIJA HAMISI-----RESPONDENT

RULING

11th October & 1st December, 2023

ITEMBA, J.

The applicant filed this application for leave to appeal to the Court of Appeal by way of a chamber summons under Section 47(2) of the Land Courts Disputes Act Cap 216 RE: 2019, Section 5(1) (c) of the Appellate Jurisdiction Act, Cap. 141, RE: 2019, and Rule 45(a) of the Tanzania Court of Appeal Rules, 2009. The application is supported by the joint affidavit deposed by Ridhiwan Idd Machombo and Ramadhan Juma and the respondent filed a counter affidavit to oppose the application. The applicant prays this court to grant leave to lodge an appeal to the Court of Appeal against the decision made by this Court dated 30 June 2023 before Hon. Dr. Morris, J.

During the hearing, the applicants were represented by Mr. Adam Robert and Mr. Mahimbali learned counsels and the respondent appeared in person, unrepresented.

Submitting first, Mr. Mahimbali for the applicants prays the court to adopt the joint affidavit deposed by the applicants and form part of his submissions. He went on that the applicants are applying for leave to appeal to the court of appeal against the decision of this court in Land Appeal No. 27 of 2023 which was delivered on 30.06.2023 before Hon. Dr. Morris, J. which was decided in favour of the respondent. He went on that, the grounds of the application are found on paragraph 7 and 8 of the joint affidavit. He also cited the case of **Winfrida Mlagha vs Daniel Paulo Mwasike (Administrator of the Estate of the Late Paulo Mwasile) & 2 Others** Civil application No. 112/06 of 2022 where the condition for leave were explained that there need to be a *prima facie* arguable ground of appeal. Referring to paragraph 7 and 8 of the applicant's affidavit, he insisted that, there are arguable issues for consideration and determination by the court of appeal.

Responding to the applicant's submissions, the respondent prays this court to adopt the counter affidavit filed and form part of her submissions. She strongly objected to the prayer claiming that the plot is hers as she has been paying some levies for it for about 13 years.

Having heard the submissions of the learned counsel for the applicants in favour of the application and reply by the respondent in person, I will determine *whether the application is meritorious*.

The law under section 5(1)(c) of the Appellate Jurisdiction Act, Cap 141 [R.E.2022] provides that:-

(1) 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—

(a) n/a

(b) n/a

(c) 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 settled position of the law is to the effect that, the grant of leave to appeal to the Court of Appeal is not a matter of mere formality. A party intending to be allowed to appeal must demonstrate, with material sufficiency, that the intended appeal carries an arguable case that merits the attention of the Court of Appeal. Thus, a grant of leave is granted if *prima facie* grounds are meriting the attention of the Court of Appeal. In other words, there must be based on solid grounds which are weighty enough to engage the minds of the Court of Appeal. It was held in **Sango Bay vs Dresdner Bank A.G** [1971] EA 17, that:-

*"Leave to appeal will be granted where **prima facie** it appears that there are grounds which merit serious judicial attention and determination by a superior Court."*

(See also **Winfrida Mlagha vs Daniel Paulo Mwasike (Administrator of the Estate of the Late Paulo Mwasile) & 2 Others**, Civil Application No. 112/06 of 2022. In Other way, there must be arguable issues on fact or law to be determined. The law on this point is very clear on what should the court consider before granting leave to appeal to the Court of Appeal. In the case of **The Regional Manager-TANROADS Lindi vs DB Shapriya and Company Ltd**, Civil Application No. 29 of 2012, the Court of Appeal of Tanzania pointed out that;

"It is now a settled that a Court hearing an application should restrain from considering substantive issues that are to be dealt with by the appellate court. This is so in order to avoid making decisions on substantive issues before the appeal itself is heard."

This court is also aware of the principles governing court's exercise of discretion to grant leave to appeal as was pronounced by the Court in the often-cited case of **British Broadcasting Corporation v Eric Sikujua Ng'maryo** as was cited in the case of **Rutagatina C. L. vs The Advocates Committee and Another**, Civil Application No. 98 of 2010 (unreported), 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 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 10 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."*

I have perused the applicant's affidavit specifically in paragraph 8 (i) - (iii) and observed that the main complaint by the applicant is that there was contradictory evidence from the respondent and that she failed to prove her title over the disputed land.

I have utterly considered these grounds of application and I find that, in terms of **British Broadcasting Corporation v Eric Sikujua Ng'maryo (supra)** there is no issue of general importance or a novel point of law raised by the appellant. Without stepping into the merit of appeal itself, I am of the view that, the applicant did not demonstrate any disturbing feature worth the attention of the Court of Appeal and these grounds do not show a *prima facie* or arguable appeal as the law requires.

For the reasons stated above, the application is dismissed for lack of merit. The application for leave to appeal to the Court of Appeal against

the decision of this Court in Land Appeal No. 27 of 2023 is hereby not granted. Costs to follow the event.

It is so ordered.

DATED at **MWANZA** this 1st Day of December, 2023



**L. J. ITEMBA
JUDGE**

Ruling delivered in chambers this 1st Day of December 2023, and sealed my hands with the seal of this court in the presence of Advocate Adam Robert for the applicants, the respondent in person and Ms. Gladys Mnjari RMA

**L. J. ITEMBA
JUDGE**