

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

**LAND APPLICATION NO. 65 OF 2021**

*[Originating from Land Appeal No. 85 of 2021, High Court of Tanzania at Shinyanga]*

**GASHEL GAKUNE ..... APPLICANT**

**Versus**

**MBUKE SHIMBA .....RESPONDENT**

**RULING**

*Nov. 7<sup>th</sup> & 9<sup>th</sup>, 2023*

**Morris, J**

Mr. Gashel Gakune has applied to this Court for leave to appeal to the Court of Appeal. He is resolute to challenge this Court's decision dated October 6<sup>th</sup>, 2022 in Land Appeal No. 85 of 2021. The application is preferred under section 47(2) ***the Land Disputes Courts Act***, Cap 216 R.E. 2019; and section 5 (1)(c) of ***the Appellate Jurisdiction Act***, Cap 141 R. E 2019. However, the respondent - Ms. Mbuken Shimba, has her affidavit in opposition.

Briefly, the parties herein are litigating over a landed property located at Mwatunguji Village, Meatu District in Simiyu Region (the suit property). The respondent, as administratrix of the estates of the late

Shimba Shenga, sued the applicant herein for vacant possession of the suit property at the District Land and Housing Tribunal for Maswa (*DLHT*). It was alleged that the said Shimba Shenga used the suit property from 1950's to 1986 when he temporarily gave the same to the applicant who was his friend. Allegedly, it was the friends' agreement that the latter would return it when needed by the owner.

Nevertheless, when so demanded by Mr. Shimba, the respondent declined to return the suit property. Before his demise, the late Shimba reported the matter to the Ward Executive Officer in vain. After being appointed to administer the estates of her father, the respondent successfully sued the applicant for vacant possession at the DLHT. His victory was upheld by this Court. Hence, this application is his preparation for the next appellate level.

During hearing, the applicant was represented by Advocate Maligisa Sakila. The respondent was unrepresented. The counsel for the applicant adopted the affidavit as part of his submissions. He then restated the grounds for the intended appeal as per paragraph 5 of the affidavit. In reply, it was submitted by the respondent that leave should not be granted to the applicant because justice has already been served by the two

courts. That is, she has been declared victorious twice and the applicant is seeking to delay justice due to her.

I have taken liberty to study the presented affidavits. The objective was to see to it that the applicant indeed exhibits or demonstrates an arguable case which merits the Court of Appeal's attention. Under the stated paragraph 5 (a) and (b) of the affidavit, the applicant alleges that this court failed to determine that the DLHT had no jurisdiction for the matter was filed out of time. Also that, the DLHT and this court, failed to consider the applicant's evidence.

In my view, parties herein should be accorded an opportunity to contend such allegations to finality. I make reference the cases of ***Simon Kabaka Daniel v Mwita Marwa Nyang'anyi & 11 Others*** [1989] 64; ***Suleiman Nchambi v Sunny Auto Works***, Misc. Civil Application No.89 of 2019; and ***Cosmas Anton Itungulu v Timoth M. Irunde***, Misc. Land Application No. 69 of 2021 (the last two are unreported). Essentially, this Court is precluded from delving into the merit of the intended appellate proceedings to the Court of Appeal.



Further, section 47(1) of ***the Land Disputes Courts Act***, (*supra*) provides that:

"47. (1) .....;  
 (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.*"

Principally, the quoted section does not specify factors to be considered by courts in granting or disallowing the application for leave to appeal. However, case law does. For instance, in ***British Broadcasting Corporation v Erick Sikujua Ng'maryo***, Civil Application No. 138 of 2004 (unreported) requisite conditions were set. They are contained in the excerpt below:

*".... 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...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...However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted"*(emphasis added).

Basing on the foregoing court pronouncement, leave to appeal should be granted on a sound legal foundation. In circumstances of this matter, I am satisfied that the application is meritorious. It contains issues which are contentious and will, in my view, stir arguable proceedings at the next stage of the matter. The arguments over the jurisdiction of the DLHT in alleged time-barred matter, to me carries the day hereof.

I, accordingly, **grant leave** to applicant for him to appeal against the decision of this Court in Land Appeal No. 85 of 2021. I make no order as to cost. It is so ordered.



A handwritten signature in blue ink, appearing to read "C.K.K. Morris", is written over a large, stylized blue loop.

**C.K.K. Morris**

**Judge**

**November 10<sup>th</sup>, 2023**

A handwritten signature in blue ink, appearing to read "C.K.K. Morris", is written over a large, stylized blue loop.

Ruling is delivered this 10<sup>th</sup> day of November 2023 in the presence of Mr. Maligisa Sakila, the applicant's advocate and Ms. Mbuke Shimba, the respondent.



**C.K.K. Morris**

**Judge**

**November 10<sup>th</sup>, 2023**

