

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

**MISC. LAND APPLICATION NO. 45 OF 2022**

*[From judgement of the High Court of Tanzania at Shinyanga in Land Appeal No. 82 of 2021]*

**MAYEKA MASANJA @ NKENGI MHANGO.....APPLICANT**

**Versus**

**JUMA KASEKO.....RESPONDENT**

**RULING**

*Oct. 30<sup>th</sup> & Nov. 3<sup>rd</sup>, 2023*

**Morris, J**

This application is at the instance of the Mr. Mayeka Masanja @ Nkengi Mhango. He is moving this Court to grant him leave to appeal to the Court of Appeal. He is resolute to challenge the High Court's decision dated July 15<sup>th</sup>, 2022 in Land Appeal No. 82 of 2021. The application is brought under section 47(2) ***the Land Disputes Courts Act***, Cap 216 R.E. 2019; and rule 45 (a) of ***the Tanzania Court of Appeal Rules***, 2009. Two affidavits of the applicant support it. The respondent, Juma Kaseko, however, filed his affidavits in opposition.

The main grounds advanced by the applicant in his affidavits include the claim that this Court erred in undermining the principle of law



that proof in civil cases is on balance of probability. Further, the applicant alleges that: the applicant's evidence was heavier than the respondent's which involved unreliable witnesses; this Court wrongly applied sections 110 and 111 of ***the Evidence Act***, Cap 6 R. E 2019; the land in dispute was not clearly described per regulation 3(2) (b) of ***the Land Disputes Courts (The District Land and Housing Tribunal) Regulations*** 2003 (*the Regulations*); and its failure to hold that the judgement of the District Land and Housing Tribunal (DLHT) contravened regulation 19 (2) of ***the Regulations*** as assessors' opinion were not read. All these grounds are deposed in paragraphs 5 and 2 of the affidavit and supplementary affidavit respectively.

When the application was scheduled for hearing advocate Frank Samwel represented the applicant. However, the respondent was unrepresented. He appeared in person. The counsel for the applicant adopted the affidavits and reiterated the depositions therein. The respondent, nonetheless, registered his contest against the application. He submitted that the applicant is employing delating tactics so as to deny him justice

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 (i) (ii) and (iii) of the affidavit, the applicant alleges that this court misdirected itself in whole undertaking of evidence-analysis. It is evident, therefore, that the said party faults the way the court discharged its statutory mandate of handling evidence.

Under paragraph 2 (i) and (ii) of the supplementary affidavit, it is averred that the applicant is intending to pursue justice on the basis that provisions of law should be complied with and correctly applied. In my view, parties herein should be accorded an opportunity to contend such allegations to finality. I also 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 (both 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 include the proper application of sections 110 and 111 of ***the Evidence Act*** (*supra*); together with regulations 3(2) (b) and 19 (2) of ***the Regulations*** (*supra*).

I, accordingly, **grant leave** to applicant for him to appeal against the decision of this Court in Land Appeal No. 82 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", with a large, sweeping flourish extending to the right.

**C.K.K. Morris**

**Judge**

**November 3<sup>rd</sup>, 2023**

A handwritten signature in blue ink, consisting of a large, stylized loop with a small dot at the end.

Ruling is delivered this 3<sup>rd</sup> day of November 2023 in the presence of Messrs. Mayeka Masanja @ Nkengi Mhango and Juma Kaseko; the applicant and respondent respectively.



**C.K.K. Morris**

**Judge**

**November 3<sup>rd</sup>, 2023**

