

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO. 69 OF 2023

(C/F Consolidated Land Appeal No. 68 and 72 of 2022 in the High Court of the United Republic of Tanzania at Arusha and Land Application No. 4 of 2020 in the District Land and Housing Tribunal)

ERNEST MAGANGA.....APPELLANT

VERSUS

PATRICE MAGANGA.....1ST RESPONDENT

**AUGUSTINO ANTHONY BAHANE (Administrator of
the Estate of the late ANTHONY BAHANE).....2ND RESPONDENT**

RULING

21/11/2023 & 21/12/2023

GWAE, J

The applicant, Ernest Maganga is before the court seeking leave to appeal to the Court of Appeal of Tanzania against the decision of this court in Consolidated Land Appeal No. 68 and 72 of 2022. The application is brought under the provision of section 47 (1) of the Land Disputes Courts Act [Cap 216 R.E 2019] and is accompanied by an affidavit of the applicant where reasons for the sought leave are given.

The respondents on the other hand objected the application through their joint counter affidavit.

It is in his affidavit where the applicant stated that, he was the appellant at the High Court of the United Republic of Tanzania at Arusha in Consolidated Land Appeal No. 68 and 72 of 2022 and the respondent in Land Application No. 39 of 2018 at the District Land and Housing Tribunal for Mbulu at Dongobesh. He went on stating that, both the applicant and the respondents were aggrieved by the decision of the DLHT and thus filed an appeal to the High whose judgment was delivered in favour of the respondent.

Aggrieved by the decision of this court, the applicant herein lodged a notice of appeal to the Court of Appeal of Tanzania and since leave is the requirement of the law before filing of his intended appeal to the Court of Appeal, he has now filed this application. The applicant also mentioned the intended grounds in the Court of Appeal of Tanzania to include the following;

1. Whether the Court was correct to condemn the appellant to pay costs in situation where the tribunal broker in executing tribunal's decision handover land to the appellant more than what was ordered (condemned for another person's mistake).
2. The court erred in condemning the appellant alone to pay costs of both appeal and the trial tribunal.
3. The trial court erred in law in joining Kibaigwa Auction Mart & Co. Ltd joined in Land Appeal No. 72 of 2022 in Consolidated

Land Appeal No. 68 and 72 of 2022 without providing any reason not to do so.

When the matter came for hearing, the applicant was under the legal representation of the learned counsel Mr. Elibariki H. Maeda the respondents on the other hand, were also represented by Miss. Franciscar Gaspar the learned counsel. With leave of the court, the application was disposed by way of written submissions.

Supporting the appeal, the counsel for the applicant argued that the Court was wrong to condemn the applicant herein to pay costs of both the trial tribunal and the consolidated appeal because as narrated in the brief background of this case and considering what is on record, the applicant did not invade into the respondent's land.

Mr. Maeda also stated that, the question as to how the tribunal broker executed his task is not a concern of the applicant as the broker in handed him over the land in writing. Therefore, according to him, this is an arguable as to who should pay costs as such is none other than the broker who failed to discharge his duties as per the direction of the Tribunal.

Another issue that the counsel seek for determination by the Court of Appeal of Tanzania is the issue of not including the 2nd respondent as appearing in the trial tribunal one Kibaigwa Auction Mart & Co. Ltd in the

Consolidated Land Appeal No. 68 and 72 of 2022. It was his argument that none inclusion of Kibaigwa Auction Mart & Co. Ltd in the appeal is serious anomaly and prejudiced the outcome of the consolidated appeal. In that regard, it was his prayer that this Honourable Court to grant the applicant leave to appeal to the Court of Appeal of Tanzania as there are grounds which require consideration by the Court of Appeal

Responding to the applicant's submission, the respondents strongly opposed the application and further stated that, the same is meritless. The respondents went on submitting that, the applicant's misconduct during execution entitled him to pay costs to the respondent and hence could not at this point shift costs to the Kibaigwa Auction Mart & Co. Ltd. They further added that, the applicant technically is not challenging the decision of this Court but rather on payment of costs whereby the applicant wants the said Kibaigwa Auction Mart & Co. Ltd to be joined as a party.

It was also the submission of the respondents that, the intended grounds of appeal demonstrated by the applicant are not meritorious to inquire the attention of the Court of Appeal of Tanzania.

In his rejoinder, Mr. Maeda reiterated what he submitted in his submission in chief.

In the present application, the decision subject of the intended appeal originated from a land dispute lodged at the District Land and Housing Tribunal for Karatu. Thus, to appeal to the Court of Appeal against the decision of this court, the appellant is inevitably required to obtain, as a condition precedent, leave to appeal to the Court of Appeal of Tanzania.

The principle of law governing grant of leave to appeal to the Court of Appeal is well settled. In a proper application, the duty of this court is just to look as to whether there are contentious issues demanding the determination by the Court of Appeal (T). In the case of **British Broadcasting Corporation vs. Erick Sikujua Ng'maryo**, Civil Application No. 138 of 2004 (unreported). In the former case, the Court of Appeal inter alia said:

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

The Court of Appeal went on insisting on discretionary use of powers in granting leave, and had the following to say:


"Needless to say, leave to appeal is not automatic. It is within the discretion of the work of the court to grant or refuse leave. The discretion should 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 novel point of law or where the grounds show a prima facie or arguable appeal... However, where the grounds of appeal are frivolous, vexatious, useless or hypothetical, no leave will be granted."

From the grounds of appeal enlisted together with the judgments of both the trial tribunal and the first appellate court, I find that there are issues of general importance to be determined by the Court of Appeal of Tanzania. Therefore, this application is granted as prayed.

It is so ordered.

DATED at ARUSHA this 21st December 2023




SGD M. R. GWAE
JUDGE