

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB-REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. LAND APPLICATION NO. 67 OF 2023**

*(C/f Land Appeal No. 143 of 2022 in the High Court of the United Republic of Tanzania at Arusha (Hon. B.K. PHILIP, J) dated 12. 06. 2023 and original Land Application No. 73 of 2020 in the District Land and Housing Tribunal for Babati at Babati)*

**BETWEEN**

**WALANGI GINAKU.....APPLICANT**

**VERSUS**

**GIDANYASH GIDAGWANDU.....RESPONDENT**

**RULING**

8<sup>th</sup> December, 2023 & 23<sup>rd</sup> January, 2024.

**TIGANGA, J:**

This ruling is on an application for leave to appeal to the Court of Appeal. It is made 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], by way of a chamber summons supported by an affidavit sworn by Mr. WALANGU GINAKU, the applicant. The leave sought is against the decision of this court (Hon. B.K. PHILIP, J.) delivered on 12<sup>th</sup> June 2023 in Land Appeal No. 143 of 2022 which was decided in favour of the respondent. This application was preceded by a notice of appeal lodged on 14<sup>th</sup> June 2023.

The brief facts of the case according to the applicant's affidavit are that the Applicant who was the Respondent in Application No. 73 of 2020, before the District Land and Housing Tribunal for Babati, at Babati, lost the suit and subsequently preferred Land Appeal No. 143 of 2022 in the High Court of the United Republic of Tanzania at Arusha. In its judgment delivered on 09<sup>th</sup> September 2022, the trial tribunal found the applicant by dismissing the Respondent's claims with costs and declared the applicant as the lawful owner of the disputed land, ordering immediate eviction of the respondent and permanent restraint on the disputed land.

Disgruntled, the respondent preferred an appeal to this Court in Land Appeal No. 143 of 2022 in the High Court of the United Republic of Tanzania at Arusha challenging the judgment of the tribunal. In its judgment dated 12<sup>th</sup> June 2023, this Court dismissed the appeal in its entirety with costs for lack of merit.

In further search for his right, the applicant now seeks to impugn the judgment of this court, hence this application for leave to appeal to the Court of Appeal. At the time of the hearing of this application, the applicant was represented by Mr. Stephano Magambo, learned Advocate while the respondent was absentia and unrepresented.

Mr. Magambo adopted the affidavit's contents and urged the court to grant the leave. The Applicant contended that Application No. 73 of 2020, which was before the DLHT Babati, was filed by the Applicant who was absent, but the DLHT proceeded with the case. In his view, that was against the law. On top of that, the DLHT changed one of the assessors without notifying the parties, particularly the Respondent before it. Mr. Magambo prayed for leave to be granted by this court, to

for the Court of Appeal to deal with these issues. He submitted that these grounds are meritorious and deserve to be considered by the Court of Appeal. He cited the case of **NBC v Macha Mussa Uledi**, 2020, TCR 524, CAT to support his argument.

I have considered the affidavit filed for the applicant, as well as the brief oral submission of the learned Advocate. It is common knowledge that in the application of this nature, it has been held by this court and the Court of Appeal time without number that leave will be granted only when the intended appeal has some merits whether factual or legal. **See Ms. Ilabila Industries Ltd and 2 others v. Tanzania Investment Bank and Another, Commercial Case No.27 of 2002 (HC) (unreported) and Wambele Mtumwa Shamte v. Asha Juma, Civil Application No.45 of 1999 CAT (unreported)**. For instance, in the **Wambele Mtumwa Shamte** case (supra), the Court of Appeal acknowledged that:

*"The law provided no explicit factors to be taken into account in deciding whether to grant leave, the Court reiterated generally that leave would be granted if the intended appeal has some merits whether factual or legal".*

Now, the issue for determination is whether the intended appeal has some merits factual or legal for the Court to consider. The applicant through the affidavit sworn by Mr. Walangi Ginaku, has set out, under sub-paragraphs (a) to (f) of paragraph 7, the six (6) points of law in respect of which leave is sought. These points of law raised by the learned Advocate are: -

- i. *Whether it was proper for the respondent to be heard in the absence of the Applicant in Application No. 73 of 2020 on 27/07/2022.*
- ii. *Whether it was proper to change hands from one presiding officer to another in Application No. 73 of 2020 without stating reasons.*
- iii. *Whether in Application No. 73 of 2020 there is no opinion of assessors.*
- iv. *Whether it was proper not to visit locus in quo in Application No. 73 of 2020.*
- v. *Whether it was proper to make amendments to the names of Applicant in the impugned Application beyond orders and permission.*
- vi. *Whether it was proper for Application No. 73 of 2020 to be determined without being referred to the Ward Tribunal.*

The grounds for the application for leave to appeal were set out in the case of **Sango Bay Vs Dresdner Bank [1971] EA 17**, where Spry V.P held that:

*"I understand it, leave to appeal from an order in civil proceedings will normally be granted where prima facie it appears that there are grounds of appeal which merit serious judicial consideration".*

As to how to determine whether there are grounds that merit judicial consideration on appeal, I wish to borrow the wisdom from the decision of the

Supreme Court Republic of Uganda in the case of **Ayebazibwe vs Barclays Bank of Uganda Ltd & 3 Others, Miscellaneous Application No 292 of 2014**, in which the Court held that:

*"In order to determine whether there are grounds which merit judicial consideration on appeal, the applicant has to demonstrate the grounds of objection showing where the court erred on the question or the issues raised by way of an objection. It would therefore be necessary to set out what the controversy before the court was and how it determined that controversy. For leave to appeal to be granted, the applicant must demonstrate that there are arguable points of law or grounds of appeal which require serious judicial consideration on appeal arising from the decision of the court on the controversy. It is necessary to set out the controversies upon which the court ruled and the grounds of the application which dispute or contest the correctness of the decision of the court on each controversy. Such grounds should be capable of forming the grounds of appeal deserving of serious consideration by the appellate court."*

I am aware that in so doing this court should avoid as much as possible to turn itself into the Court of Appeal. It should do so by merely looking at the set-out grounds and see whether the grounds merit consideration by the Court of Appeal. Having chewed over the application together with the supporting affidavit, paragraph 7 (a) to (f) in particular, I am satisfied that the applicant has sufficiently set out the controversies upon which the court ruled and the grounds of the application which

dispute or contest the legality of the decision of this based what this court allegedly omitted to consider in its decision.

I have carefully scrutinized the application and the grounds upon which leave is sought to be granted. I find some grounds warranting judicial consideration by the Court of Appeal of Tanzania. Although most of these grounds were determined by this Court, it is the Court of Appeal that is capacitated to decide whether they were decided correctly or otherwise. That said and done, I consequently, grant leave for the applicant to appeal to the Court of Appeal. No order as to cost is made.

It is accordingly so ordered.

**DATED** and delivered at **ARUSHA** this 23<sup>th</sup> day of January 2024



A handwritten signature in blue ink, appearing to read "J.C. Tiganga", is written over a horizontal line.

**J.C. TIGANGA**  
**JUDGE**