

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE REVISION NO. 2 OF 2008

*(From the Decision of the District Land and Housing Tribunal of
KINONDONI District at KINONDONI In Land Application 41 of 2007)*

MARY MASAWAAPPLICANT
VERSUS
YESAYA F. MWAKALINDILE.....RESPONDENT

RULING

R.E.S. Mziray, J

This application is brought under Section 5(1) (c). of the Appellate Jurisdiction Act and Rules 43 (a) and 44 of the Court of Appeal Rules, 1979 and Section 47 (1) and (2) of the Land Disputes Courts Act, 2002, seeking for leave to file an Appeal to the Court of Appeal of Tanzania against the Revision order made by this Court on 9/6/2009.

The application is supported by affidavit deponed by the learned counsel for the Applicant one Gregory Lugaila. He has amplified the depositions of his affidavit in the written submission learned counsel made on behalf of the Applicant. Basically he is

challenging the Revisional order of this Court to have not taken into consideration the allegation that the ex-parte judgment of the trial court was made without notice to the Applicant. He is further challenging the order of the Trial Tribunal for the Applicant to demolish the built structure in order to give way for the purpose of easement. It is the contention of the Applicant that there is a serious issue for determination by the Court of Appeal in respect of the easement granted because under Section 146 (1) of the Land Act, Cap.113 R.E, as a matter of Law, easement must be granted by a Registered owner of a right of occupancy. It is the view of the learned Counsel that one cannot claim right of way over his neighbours land only by long usage and if the Respondent had been landlocked he would have applied for right of access order after complying with Section 148 of the Land Act or apply for a communal right of way under Section 153 as there are a number of people who are alleged to have been blocked by the Applicant.

In the Counter Affidavit of the Respondent he deponed that the Applicant was fully aware of the suit against her in the lower tribunal and if she was aggrieved by the decision given she was supposed to file an application to set aside the ex-part judgment and not to resort to revision proceedings to this court. According

to him it was proper for this court to dismiss the revision proceedings and by mere fact that she is aggrieved by the revisional order is not sufficient for leave to appeal be granted to her. He prayed for the application be dismissed.

The issue for determination is whether there is a point of law involved to warrant the grant of leave to the Applicant to file an appeal to the Court of Appeal of Tanzania against the revisional order made by this court on 9/6/2009. In the submission of the learned counsel for the Applicant he made in elaboration of the depositions in the affidavit in support of the Application, the learned counsel has brought to the attention of the court the provisions of Sections 146, 148 and 153 of the Land Act, 2002, on the whole question of easement, which he think were not given due attention by this court in its revisional order.

Basically the learned Counsel want the Court of Appeal to determine whether the easement granted complied to the Law. I think this point merit for the matter to go to the highest court of the land for determination.

I therefore find that there is a point of law in this application worth to be considered by the Court of Appeal and accordingly I grant leave to the Applicant to file an Appeal to the Court of

Appeal of Tanzania against the Revisional order of this court made on 9/6/2009.

No order as to costs.

R.E.S. Mziray

JUDGE

Right of Appeal explained.

A handwritten signature in black ink, appearing to be 'R.E.S. Mziray', written over a horizontal line.

R.E.S. Mziray

JUDGE

19/7/2010