

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

MISC. LAND CAUSE NO. 733 OF 2017

LILIAN SHOO.....APPLICANT

VERSUS

PROSPER M. LAMTEYRESPONDENT

Date of Last Order: 14/05/2018

Date of Ruling: 08/06/2018

RULING

S.A.N. WAMBURA, J:

The applicant **Lilian Shoo** made this application under Section 47 (1) of the Land Disputes Courts Act Cap. 216 and prayed for the following orders;

a) That the Honourable Court may be pleased to grant leave to the applicant to lodge an appeal to the Court of Appeal of Tanzania against the Judgment and Decree delivered on 11th August 2017.

b) That Costs be in the cause.

The application was supported by the affidavit sworn by Prof. Cyriacus Binamungu Advocate for the applicant.

The respondent was represented by Mr. Tarimo the learned Counsel.

Supporting the application, the applicant contended that justice had not been done to her by the District Land and Housing Tribunal and this court because the trial tribunal did not properly evaluate the evidence adduced. Therefore she prayed to this court to grant her leave to appeal to the Court of Appeal as prayed.

In response, Mr. Tarimo submitted that the facts stated in paragraph 5 (a)-(c) of the applicant's affidavit are not material issues which need the attention of the Court of Appeal to decide upon as all of them had been determined and evaluated by lower Court and this Court.

He stated that paragraph 5 does not disclose any point of law to be determined by the Court of Appeal but rather it states the facts of the case. He therefore prayed for the dismissal of the application with costs.

Now the main issue for consideration by this Court is whether there is a point of law worth to be considered by the Court of Appeal.

It is trite law that before this Court can grant such leave, it must satisfy itself that the applicant has demonstrated that there is a point of law involved for the attention of the Court of Appeal.

This position was reiterated by the late Mwalusanya J (as he then was) in the case of **SIMON KABAKA DANIEL VS. MWITA MARWA NYANG'ANYI AND 11 OTHERS** (HC) [1982] TLR No. 64 where it was held that;

“In any application for leave in the Court of appeal the applicant must demonstrate that there is a point of law involved for the attention of the Court of Appeal”.

Again in the case **NURBHAIN RATTANSI VS MINISTRY OF WATER CONSTRUCTION ENERGY LAND AND ENVIRONMENT AND ANOTHER** Civil Application No. 3 of 2004 TLR [2005] pg. 220, the Court insisted that for the applicant to be granted leave to appeal to

the Court of Appeal there must be a point of law worth consideration by the Court of Appeal.

The rationale behind the above principle is that, it is for the interest of justice that litigations should come to an end. That not every matter should go to the Court of Appeal, but only those which have serious contentious issues of law for consideration by the Court of Appeal.

Now the facts stated in paragraph 5 (a)-(c) of the applicant's affidavit as herein quoted;

“Paragraph 5. That in the judgment there are several matters worth the attention, time and consideration by the Court of Appeal, to wit:

(a) That the court seriously erred in upholding the finding that the respondent is the owner of the dispute property without applying any law and without reviewing the evidence as required and justifying the decision.


- (b) *That the court erred in not attaching weight on the root of the title which is a sale agreement between Catherine Mwaipembe and the applicant.*
- (c) *That the court wrongly upheld the element of limitation of time which is not borne out in the pleading and evidence."*

From the above paragraph I find that reasons stated in the affidavit, are matters of evidence and not points of law. It seems that the applicant is challenging the evidence adduced before the trial Court instead of pointing out the points of law which need to be determined by the Court of Appeal.

The applicant has thus failed to cross the legal threshold set by the prevailing jurisprudence. He is only seeking leave to appeal because he was dissatisfied with the Court's decision. This is not the threshold set in granting such leave.

As the applicant has failed to show that there is a point of law worth consideration by the Court of Appeal, I accordingly dismiss the application with costs.

It is so ordered.

S.A.N. WAMBURA

JUDGE
08.06.2018