

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

MISC. LAND CASE APPLICATION NO 796 OF 2017

(Arising from Land Case No.380 of 2016)

ERNEST SARONG MASSAWE.....APPLICANT

VERSUS

FELIX CHAKI1st RESPONDENT

JOHN KABALE.....2nd RESPONDENT

NOELI KIBONA.....3RD RESPONDENT

SAMSON MUKASA.....4TH RESPONDENT

MAXMILLIAN DAVID MACHA.....5TH RESPONDENT

MRS. MARIA KAJERI.....6TH RESPONDENT

Date of Last Order: 23/07/2018

Date of Ruling: 28/08/2018

RULING

Makuru, J.:

This is an application for leave to appeal to the Court of Appeal which has been preferred under the provisions of section 47(1) of the Land Disputes Courts Act, Cap 216 R.E. 2002. The application is supported by an affidavit affirmed by **Emmanuel Nasson**, learned counsel for the Applicant. The application was opposed by counter affidavits filed by the Respondents.

In support of the application, the Applicant prayed to adopt the averment contained in the supporting affidavit and argued that there are contentious issues of law under paragraphs 7 and 8 of the affidavit which needs an intervention by the Court of Appeal. He supported his argument by citing the case of **Said Ramadhani Mnyanga Vs. Abdallah Saleh (1996) TLR 74.**

In reply, Mr. Manyangu learned counsel for the 1st, 3rd and 4th Respondents and Mr. Mbuga, learned counsel for the 2nd, 5th and 6th Respondents opposed the application and prayed the same to be dismissed with cost. It is argued that, since among the relief sought was a declaratory order, the court was correct to invoke item 24 of Part I of the Schedule to the Law of Limitation, Cap 89 R.E. 2002..

By way of rejoinder, counsel for the Applicant insisted that there are contentious issues of law regarding the limitation period of the Land Case whether it is six or twelve years.

In examining the merits of this application it should be noted that for leave to appeal to the Court of Appeal to be granted the Applicant has to establish the following conditions as enunciated in the case of **Rutaganita C.L. Vs. The Advocates Committees and the Clavery Mtindo Ngalapa, Civil Application No. 98 of 2010 (DSM Registry, Unreported)**:

"As a matter of general principle, 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 shows a prima facie or arguable appeal"

In the instant application the Applicant stated that his point of law which need to be determined by the Court of Appeal is on the time limitation in a Land Case, whether it is six or twelve years where it is alleged that the suit filed by the Applicant was purely a land matter of which time limitation is twelve years. The Applicant was of the view that the Trial

Judge was wrong to uphold the preliminary objection and dismiss the suit on the ground that it was time barred. Basing on the contents of the affidavit and submissions before me, I am settled in mind that there is an arguable appeal.

I am also aware that appeal is a constitutional right. Therefore, a person has a right to exhaust all the remedies to the highest Court of the land in search for justice. In the circumstances, I am satisfied that there is an arguable appeal, for the Court of Appeal to adjudicate upon the rival contentions of the parties.


I therefore grant leave to appeal to the Court of Appeal as sought with costs.

It is so ordered.



C.W. Makuru
JUDGE
28/8/2018

Court: Ruling delivered in court this 28th day of August, 2018 in the presence of Ms. Zainab Waziri learned counsel for the Applicant, Mr. Manyangu learned counsel for the 1st, 3rd and 4th Respondents also holding brief for Mr. Jonathan Mbuga for the 2nd, 5th and 6th Respondents.



C.W. Makuru
JUDGE
28/8/2018