

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

MISC. LAND APPLICATION NO. 1045 OF 2017

HARIETH G MKANDE (Next friend of **GODFREY MKANDE**).....**APPLICANT**
VERSUS

AWADH ABOOD.....**1ST RESPONDENT**
ESHE ABOOD.....**2ND RESPONDENT**

Date of last order: 24/07/2018

Date of Judgment: 29/08/2018

RULING

Makuru, J.:

This ruling is in respect of an application for leave to appeal to the Court of Appeal of Tanzania against the decision of this court in Land Case No. 47 of 2016. The application has been brought under section 47(1) of the Land Disputes Courts Act Cap 216 RE 2002 and it is supported by the affidavit of **Herieth G. Mnkande.**, the Applicant.

The applicant was assisted gratis by the Legal and Human Rights Center while the respondent enjoyed the legal services of Eugenia Valerian Minja from Smile Stars Attorneys. The application was argued by way of written submissions.

Submitting in support of the application the applicant argued that, there are issues raised in the supporting affidavit as well as the intended memorandum of appeal that requires consideration of the appellate court. The said issues of law are:-

1. That the court erred in law and facts for failure to consider that the appellant has being in peaceful occupation of the disputed area for more than 12 years
2. That the court erred in law and fact by disregarding the evidence of the appellant and failure to recognize that the appellant has proved his lawful ownership of the disputed area.
3. That the court erred in law and fact for failure to consider that the only witness who supported the respondents failed to produce a single document before the court to support his allegations.

It is the applicant's further argument that the issue of seeking leave is the matter of procedure which determination of the court is required to establish whether there are issues of law to be considered by the court of appeal. Citing the case of **Nurbanin Rattansi vs Ministry for Water Construction Energy Land and environment and Hussein Rajabu Ali Hirji ZNZ** TLR (2005) PG 220, the applicant submitted 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.

In reply thereto Ms. Minja contended that, in an application for leave to appeal to the Court of Appeal, the applicant must demonstrate that there is a point of law involved for the attestation of the Court of Appeal. He cited the case of **Simon Kabaka Daniel v Mwita Marwa Nyang'anyi & 11 Others** (1989) TLR 64 in support of his contention. According to him, the applicant did not adduce any legal issues to be determined by the Court in her affidavit.

Having considered the submissions of both parties, I will now determine the merits of this application. As well submitted hereinabove, in order to secure leave to appeal to the Court of Appeal, the applicant must demonstrate that there are legal issues worth to be determined by the Court of Appeal. This position was established by the Court of Appeal in a number of decisions including the case of **Abubakari Ali Himid versus Edward Nyelusye**, CAT Civil Application No. 51 of 2007 (Dar es Salaam Registry, unreported) whereby Nsekela J.A (as he then was) cited with approval the case of **Harban Haji Mosi and Another vs. Omar Hilal Seif and Another** [2001] TLR 409 in which it was stated thus –

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

Nsekela J.A., as he then was, went on to state that:-

I am aware that leave to appeal is not automatic, it is discretionary. On the affidavit evidence before me, the applicant has established that the application is not frivolous, vexatious or useless. There is an arguable appeal, hence the need for this Court to adjudicate upon the rival contentions of the parties.

In the instant application the legal issues raised by the applicant are whether the applicant is entitled to land by adverse possession and that the trial court did not properly evaluate evidence. In my view these are legal issues worth to be determined by the Court of Appeal. Hence, the applicant has managed to establish that there is an arguable appeal.

Consequently, I find merits in this application and I hereby grant it with no order as to costs.



C.W. Makuru
JUDGE
29/08/2018

Court: Ruling delivered in court this 29th day of August, 2018 in the presence of the Applicant in person and Mr. Masinga Meswin holding brief for Mr. Minja learned counsel for the Respondents.



C.W. Makuru
JUDGE
29/08/2018