

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND CASE NO. 895 OF 2016
(Arising from Misc. Land Case Application No. 948 of 2016 High Court Land Division)

ALLY BAKARI MUKI APPLICANT

VERSUS

MOHAMED IDD KIBURUMA RESPONDENT

RULING

Date of Last Order: 05/06/2018

Date of Ruling: 10/08/2018

MZUNA, J.:

Ally Bakari Muki has filed this application for leave to appeal to the Court of Appeal of Tanzania under Section 47 (1) of the Land Disputes Courts Act, Cap 216 RE 2002. **Mohamed Idd Kiburuma** strongly resisted this application.

Both parties appeared in person unrepresented. With leave of the court, the application was ordered to be disposed of by way of written submissions.

As a matter of fact, this matter had its root from Azimio Ward Tribunal, Temeke. There was an appeal lodged to the District Land and Housing Tribunal vides Appeal No. 3/2015. The issue concerned demolition of a wall to allow the boundary to be open. The applicant filed application before this court for stay of execution vides Misc. Land case Application No. 948 of 2016 pending hearing of this application for leave to appeal to the Court of Appeal. The same was dismissed for non appearance.

The main issue is whether there is/are points of law worth consideration by the Court of Appeal?

Supporting the application, the applicant contended that there are points of law which need to be determined by the Court of Appeal. To cement his argument, he referred this court to the case of **British Broadcasting Corporation vs Eric Sikujua Ng'aro**, Civil Application No. 138 of 2004 (unreported) where the court held that leave to appeal will be granted where "the grounds of appeal raise issues of general importance or a novel point of law." He therefore prayed for the application to be granted as prayed.

In response, the respondent submitted that the applicant failed to explain in clear words on how justice was not done on his side. The respondent was of the view that since the dispute originated from a land

dispute which was initially filed at the Ward Tribunal of Azimio in Temeke District, the proper section to move this court was Section 47(2) of the Land Disputes Settlement Act No. 2 of 2002 instead of Section 47(1). He therefore prayed for the prayers sought in the chamber summons to be dismissed as the Court was moved by a wrong provision of the law.

In rejoinder, the applicant submitted that applying Section 47(1) or 47(2) are just mere technicalities which should not be a hindrances of justice as provided for under Article 107A (2) (e) of the Constitution of the United Republic of Tanzania of 1977. He referred this court to the case of **Cropper vs. Smith (1884)** 26 CL.D at Page 710.

The applicant is of the view that the technicalities to the application should not be considered by the court, but it should be just to decide for the rights of the parties which is appeal by granting leave sought and not to punish them due to the mistakes which are minor and curable and do not affect the root of the case.

Having gone through the submissions of both parties, the grounds stated in the affidavit and considered the relevant law, I have observed that

the applicant has not cited the decision of this court which he seeks leave to challenge.

In the absence of such vital information and there being no points of law stated under section 47 (2) of the Land Disputes Courts Act, Cap 216 RE 2002, this application lacks merit and is bound to be dismissed. So, even assuming the application is properly before this court, still the applicant has not shown points of law which calls for the Court of Appeal intervention. In paragraph 5 of the filed affidavit, the applicant said that:-

"That for the interest of justice to be done this matter the leave to appeal should be granted (sic)..."


May be for emphasis, leave to appeal to the Court of Appeal cannot be granted automatically. It was held in the case of **British Broadcasting Corporation vs Eric Sikujua Ng'aro** (supra), that:-

"...Needless to say, leave to appeal is not automatic. It is within the discretion of the court to grant or refuse leave. The discretion must, however judiciously exercised and on the materials before the court. 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 show a prima facie or arguable appeal..."

The above quoted words are clear that leave cannot be granted as a matter of right but of law. That becomes even more serious in that the case which is being challenged of the High court, is not stated or is non-existent.

Accordingly the application stands dismissed with costs.


M. G. MZUNA,
JUDGE. 10/8/2018

10/08/2018

Coram: Hon. A. Teye DR

For Applicant: present

For respondent: present

RMA: Mhagama

COURT: Ruling read and delivered by the Deputy Registrar in the presence of the parties this 10/08/2018.

A handwritten signature in black ink, consisting of a large loop followed by several vertical strokes, positioned above the printed name.

A. Teye
DEPUTY REGISTRAR
10/08/2018