

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

**MISC LAND APPLICATION NO. 911 OF 2016
(Arising from Land case No. 12 of 2011)**

RAZIA TURAB MUHAMEDALI LADHA *(As Administratrix of the estate of the late TURAB MOHAMEDALI LADHA.....* **APPLICANT**

VERSUS

NAUSHAD MOHAMEDALI LADHA.....RESPONDENT

RULING

20/2/2018 & 6/4/2018

MZUNA, J.:

The applicant Razia Turab Mohamedalli Ladha is seeking for leave to appeal to the Court of Appeal of Tanzania against the proceedings, judgment and decree of this court in Land Case No. 12 of 2011. The application is made under Section 47(1) of the Land Disputes Court Act, Cap 216, RE 2002. The application is supported by the affidavit deposed by Mr. Leonard T. Manyama the learned counsel for the applicant.

The respondent was represented by Ms. Victoria Gregory the learned counsel. With counsel leave of the court, both learned counsel agreed to argue the application by way of written submissions.

The main issue for determination is whether there is a point of law worth consideration by the Court of Appeal?

Submitting in support of the application Mr. Leonard Manyama cited section 47(1) of the Land Disputes Court Act No. 2 of 2002 and stated that

no party can lodge an appeal to the Court of Appeal of Tanzania unless leave to appeal is sought and granted. The learned counsel also cited section 5(1) (C) of the Appellate Jurisdiction Act Cap, 141 RE 2002 to support his argument.

It is Mr. Manyama's contention that, there are major legal issues to be determined by the Court of Appeal of Tanzania as under:-

- a) Whether failure to indicate a date and a month in the duly signed agreement renders the entire agreement invalid and or unenforceable?
- b) Whether lack of signature of the Commissioner for oaths and or witness in the agreement renders the agreement unenforceable?

Mr. Manyama cited the case of **Tanzania Revenue Authority Vs. Tango Transport Co. Ltd**, Civil Application No. 5 of 2006, Court of Appeal at Arusha (unreported) to support his argument. He further submitted that the applicant stands overwhelming chances of success in the intended appeal.

In reply thereto, Ms. Gregory cited the case of **Swiss port Tanzania Limited and Another Vs. Michael Lugaiya**, High Court Civil Appeal No. 119 of 2010, Dar es Salaam Registry (unreported). She contended that where an application for leave is sought before this court, the applicant must show that there are grounds in the intended appeal which raises issues of general importance worth for determination by the Court of Appeal. To augment her point she further cited a number of cases including that of **Said Ramadhani Mnyanga Vs. Abdullah Salehe** [1996] TLR 74 and **Tanzania Investment Bank V. Alfani Bushiri Kikuyu**, High Court Civil Appeal No. 158 of 2008, Dar es Salaam Registry (unreported) to mention but few.

According to Ms. Gregory, in the applicant's affidavit as well as written submissions there is no point of law worth to be determined by the Court of Appeal.

In rejoinder Mr. Manyama reiterated his submission in chief and insisted that both the affidavit and written submissions have raised arguable points of law to be determined by the Court of Appeal.

In determining this application, I will be guided by principles of law set out in the case of **Harban Haji Mosi and Another Vs. Omar Hilal Seif and Another** [2001] TLR 409 at Pg 414 – 415. Leave to appeal is not automatic but is exercised very sparingly. The Court of Appeal held that:-

"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 specter of unmeriting matters and to enable it to give adequate attention to cases of true public importance."

On the strength of the above raised two points, I am satisfied that the applicant has established that there is an arguable appeal worth to be determined by the Court of Appeal. I hereby certify that there are points of law, namely:-

- 1. Whether failure to indicate the date and month renders the sale agreement unenforceable?*
- 2. Whether absence of signature of the Commissioner for Oath and a witness to the sale agreement renders same unenforceable?*

I do hereby grant leave to appeal to the Court of Appeal as sought. I make no order as to costs.


M. G. MZUNA,
JUDGE. 6/14/2018