

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO.420 OF 2019

MICHAEL M. KIMARO.....1ST APPLICANT

PETER IGNAS RINGIA.....2ND APPLICANT

VERSUS

ROSE PAUL WETTAKA.....RESPONDENT

RULING

OPIYO, J.

Before me is an application for leave to appeal to the Court of Appeal of Tanzania, by the two applicants here in above, Mikael M Kimaro and Peter Ignas Ringia. The application followed the ruling of Honourable Awadhi Mohamed J, given on 5th of July 2019, in Land Revision No. 23 of 2017. It is brought under section 47(2) of the Land Disputes Courts Act, Cap 216, R.E. 2002 and accompanied by the affidavit of the 1st applicant, Mikael M. Kimaro. The application was disposed by way of written submissions. Sylvester Eusebi Shayo, learned counsel, appeared for the applicants while the respondent enjoyed the services of Advocate Reginald Martin.

Submitting for the applicant, Mr. Sylvester Eusebi Shayo argued that, the issues of law which need the attention of the Court of Appeal are:-

1. Whether the judge erred in law and fact when he failed to hold that the applicants were entitled to be notified of the succession of the chairpersons.
2. Whether the judge erred in law and fact when he failed to hold that the applicants were condemned by the tribunal without being afforded a fair opportunity of being heard.

Mr. Shayo maintained that, both of the above two issues are serious issues of law that's is why the applicants intend to challenge the decision of this court at the Court of Appeal. The outcomes of the appeal and the jurisprudence that will be developed by the Court of Appeal will be useful, not only to the applicants but also to other litigants. He went on to argue that, the applicants deserve the leave as they have already taken some steps to knock the doors of the Court of Appeal, like filing the notice of appeal and obtaining copies of the ruling, drawn order and proceedings, only a leave is left for them to reach the Court of Appeal of Tanzania.

Mr. Martin, counsel for the respondent, replied firmly to the submissions by the applicant's Advocate. He insisted that, the basis which the applicant have relied their application is that, the trial chairman of the tribunal took over the proceedings which were before Hon. Mlyambina without notifying the applicants. The defense was closed in the absence of the applicants. This is not a serious issue of law that need a determination of the Court of Appeal. The raised issues are facts which were very well dealt with in the revision

before this Honourable Court by A. Mohamed J. The applicants have failed to meet the required standards for them to obtain leave to appeal to the Court of Appeal. Their application should be dismissed with costs.

I have considered the parties' submissions for and against the application. It is now settled that, in allowing an application for leave to appeal to the Court of Appeal, the paramount considerations should be (1) the rights of parties against the decision of court which the intended appeal is sought, (2) the same decision should be an appealable and (3) there must be valid grounds as opposed to chance of success by the party wishes to appeal **(see David Naburi as the Administrator of the estate of the late Maeda Naburi versus Stephen Sangu, Misc. Land Application No. 960 of 2017, HC, Land Division, DSM (unreported))**.

Examined on the basis of the above key requirements, the applicants have met all these three criteria. The ruling of Awadhi J in the revision case No 23/2017 is appealable, and therefore the parties need to be given another forum to argue their case on the arguable highlighted points. This being their constitutional right, this court cannot unduly deny them as it has no reasons to do so. Their grounds set out arguable points worth consideration by the Court of appeal. Therefore, as I cannot constitute an appellate body to discuss the grounds in detail, it is my view that the aggrieved party deserves a forum for such determination.

I would like to clear the dust that, in seeking leave to appeal to the Court of Appeal, we do need to prove existent of a point of law or chances of success

of the intended appeal. The arguments by the respondents therefore against this application can hardly stand in the way of the applicant in being granted the orders sought.

It is on these grounds as explained hereinabove, the leave is hereby granted with no order as to costs.

Ordered accordingly.



M.P. OPIYO,

JUDGE

22/4/2020