

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

**MISC. LAND APPLICATION NO. 749 OF 2020**

(Arising from Misc. Land Application No. 115 of 2020 and Land Appeal No. 164 of 2019)

**MARIA MASANJA .....APPLICANT**

**VERSUS**

**MASANJA MASHAKA .....RESPONDENT**

*Date of last Order: 30/06/2021*

*Date of Ruling: 02/07/2021*

**R U L I N G**

**MWENDA, J**

This is an Application for leave to Appeal to the Court of Appeal. It is brought under Section 5(1) (c) of the Appellate Jurisdiction Act Cap. 141 as revised and it is supported by an Affidavit of Samuel Shadrack Ntabalika.

Facts that led to filing this Application are that before the District Land and Housing Tribunal for Temeke the Applicant lodged a complaint against Respondent over trespass of a piece of Land in Mbutusara area, Temeke Municipality. This was Land Application No. 26 of 2016. At the end of the Judicial day this Application was dismissed.

Aggrieved by that decision the Applicant filed an Appeal to the High Court of Tanzania (Land Division) which was registered as Land Appeal No. 164 of 2019 which was dismissed for want of prosecutions. Again, aggrieved

by that decision she filed an application before this court praying for an order to vacate from its earlier order in Land Appel No. 164 of 2019. This matter was also dismissed. Now the Applicant is applying for leave to Appeal to the Court of Appeal.

When this matter came for hearing the Applicant was represented by Mr. Samuel Shadrack and Mr. Gudluck Rwiza and the Respondent appeared in person. It was the submission by the applicant's Advocate that the Applicant filed land Appeal No. 164 of 2019 which was dismissed for want of prosecutions. Aggrieved she filed land Application No. 115 of 2020 which was again dismissed for want of prosecution due to her Advocate's failure to enter appearance.

The learned Advocate for the Applicant submitted further that the aim of filing this Land Application No. 115 of 2020 was to explain to the court reasons for her failure to enter appearance. In an Affidavit in support of her Chamber Application she appended a medical card but the Court found that it was lacking important information and as such it was disregarded. In this present Application the Applicant intends to challenge reasons for rejections Advanced by this Court in Land Application No. 115 of 2020 as they wish the Court of Appeal to see if her sickness was enough to justify her case.

The learned Advocate concluded by submitting that the Applicant is a very old woman who entrusted her advocate to represented her. Failure of the said advocate to appear led to dismissal of the said appeal. In support of this submitted he cited a case of ***Ghanila J. Kimambi Vs. Shadrack Ruben Ng'ambi, Misc. Land Application No. 692 of 2018*** [unreported] where the advocate's negligence to appeal in court occasioning dismissal of the case was discussed.

In reply to the submissions by the learned Advocate, the respondent submitted that the grounds raised in the Applicant's affidavit are not true in that the Applicant was just home when that matter was set for hearing and her advocate was also aware of the hearing date but opted not to appear and represent her.

Having heard submissions from both parties, the issue is whether the Applicant have advanced sufficient reasons worth for determination in the court of Appeal.

In this matter it is important to see if the proposed grounds of concerns are prima facie point(s) of Law worthy for determination in the Court of Appeal. Reasons for delay as advanced by the Applicant's Advocate, that is sickness of the applicants and non-appearance of the advocate are facts which were already analyzed and determined by this court in Misc. Land Application No. 115 of 2020. On the sickness of the Applicant this Court was of the view that the medical report was not clear as to when the Applicant attended the Hospital and that even the name of the hospital is not clear. With regard to the negligence of the Advocate this Court was of the view that there is not enough proof on the allegation and if at all the allegation is true it was expected the Applicant to have lodged a formal complaint against the said Advocate.

Now therefore, if these two issues which were advanced as reasons for non-appearance were discussed and determined by this court then taking them to the Court of appeal is tasking the Court of Appeal it to deal with factual issues which were already determined.

Even if those two issues were discussable in the Court of appeal this application would not be granted as the Applicant have not applied for a certificate on a point of Law in order to go to the Court Appeal. In ***Jerome Michael Vs. Joshua Okanda, Civil Appeal No. 19 of 2014, Court of Appeal of Tanzania at Mwanza (Unreported)*** the Court of Appeal of Tanzania held:-

***"that the Appellant who wishes to access the Court of Appeal for a third time for land disputed which originated from Ward Tribunal is required to seek from the High Court of Tanzania (Land Division) to orders. The first one is an order seeking for leave to Appeal...the second requirement is to get a certificate from the High Court that a point or points of Law are involved..."***

With the foregoing reasons I hereby find that this Application has no merits and it is hereby dismissed with costs.

It is so ordered.

**DATED at DAR ES SALAAM this 02<sup>TH</sup> day of July, 2021.**



**A. Y. MWENDA**  
**JUDGE**  
**02/07/2021**