

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

MISC LAND APPLICATION NO. 626 OF 2020

(Arising from Judgment and Decree in Land Appeal No.83 of 2018 dated
28/9/2020 before Hon.Makani,J)

MOHAMED ALLY DALLA APPLICANT

VERSUS

LEONARD NICHOLAUS SEIF RESPONDENT

RULING

*Last Order: 29/7/2021
Ruling Date: 18/8/2021*

A. MSAFIRI, J

This application is brought under Section 5(2) (c) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019 and Section 95 of the Civil Procedure Code Cap 33 R.E 2019. The applicant seeks leave to appeal to the Court of Appeal against the judgment of this Court in Land Appeal No. 83 of 2018 by Madam Judge Makani.

When the application came for the hearing, both parties appeared in person, representing themselves. In their submissions, the parties presented the facts as if this was the hearing of an appeal, and being laymen, I had to guide them to argue the application. In this stance, I will confine myself on the facts based on the application before me and I will disregard the

submissions by both parties which went to touch on the merit of the intended appeal.

Submitting, the applicant prayed to adopt the contents of his affidavit. In the affidavit in support of the application which was somehow amplified in his oral submissions before me, the applicant raised an issue of ownership of disputed land. He asked on whether the act of the respondent's father collecting free known as "Ngoto", in disputed land on behalf of the applicant's father, made him the legal owner of the said land. As per paragraph 8 of his affidavit, the applicant argued that this issue is among matters that call for the determination by the Court of Appeal.

Another issue which was raised by the applicant which was claimed to be a serious point to be considered during the intended appeal was the issue of identification of boundaries whereby the trial Tribunal failed to visit the disputed land to ascertain itself of the ownership of disputed land between the applicant's father and the respondent's father.

Replying, the respondent reiterated the contents of his counter affidavit and contended that, the late Mohamed Mustafa Mohamed was the legal owner of the disputed land and he (the respondent) was appointed an administrator of the late Mohamed Mustafa Mohamed and he was not the son of the latter. He pointed that, the applicant's claims are baseless and prayed for this Court to dismiss this application.

In rejoinder, the applicant reiterated his submissions in chief and prayed for the Court to grant the application.

Having heard the submissions and considered the contents of the applicant's affidavit and the respondent's counter affidavit, the issue for my determination is whether the application has merit.

Before the determination of the application, it has come to my attention as I was going through the pleadings that this application was brought under Section 5 (2) (c) of the Appellate Jurisdiction Act, Cap 141 R.E 2019 (the Act) and Section 95 of the Civil Procedure Code, Cap 33 R.E 2019. It is my view that Section 5(2) (c) of the act is not proper provision to seek leave of the Court in the land matters as there are proper provisions under proper law for determination of the leave in the land disputes.

Section 5 (2) (c) of the Act provides that;

"No appeal shall lie against any decision or order of the High Court in any proceedings under Head (c) of Part III of the Magistrate Court Act unless the High Court certifies that a point of law is involved in the decision or order;"

(emphasis mine)

By this, it is clear that the cited provisions involve matters which are under the Magistrate Court Act, whereas the present application originates from the District Land and Housing Tribunal.

In the case of **African Banking Corporation (T) Ltd vs. George Williamson Limited**, Civil Application No.67/2017 (CAT, Dsm), the Court had this to say;

"the position of law regarding wrong citation or non-citation of the provision of law enabling the Court to grant a sought relief is that, the

*anomaly renders the application to be improperly before the court.
What the court has to do with such an application is to strike it out"*

In that stance, I find that the Court was wrongly moved as proper provisions to bring this application before this Court was Section 47 of the Land Disputes Courts Act, Cap 216 and Section 5(1) (c) of the Appellate Jurisdiction Act.

For that reason, I find this application defective and I hereby strike it out with the leave to refile within 14 days. No costs are ordered regarding the circumstances of the case.

It is hereby ordered.



A handwritten signature in blue ink, appearing to read "A. Msafiri".

**A. MSAFIRI,
JUDGE
18/8/2021**