

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

MISC LAND APPLICATION NO. 606 OF 2019

(Originated from High Court Land Division Misc. Land Appeal No. 38 of 2008, District Land and Housing Tribunal for Ilala Appeal No. 64 of 2007 and Kitunda Ward Tribunal Land Dispute No. 4 of 2007)

AYOUB HAMAD KASA APPLICANT

VERSUS

MOHAMED ABDALLAH SAID RESPONDENT

RULING

Date of Last Order: 23/07/2021

Date of Ruling: 25/08/2021

A. MSAFIRI, J

This application is made under section 47 (2) of the Land Disputes Courts Act, Cap 216 as amended by Written Laws (Miscellaneous Amendments) No. 3, Act, 2018.

The applicant filed this application for the following orders;

- 1. That Hon. Court pleased (sic) to grant leave to the applicant to appeal to the Court of Appeal of Tanzania against the Judgment in Misc. Land Appeal No. 38 of 2008, before Hon. A.F. Chinguwile, Judge, as she then was, dated 10th January, 2011.*
- 2. Costs born (sic) by the respondent.*

3. Any other relief or relief's (sic) as this court may deem just fit (sic) to grant.

The application was supported by an affidavit sworn by the applicant. By order of the Court, this application was argued by way of written submissions. The applicant was represented by Advocate Juma Nassoro who submitted that the applicant is seeking leave to appeal to the Court of Appeal against the decision of this Court in Misc. Land Appeal No. 38 of 2008 exercising appellate jurisdiction in a matter originated from Ward Tribunal. Since the intended appeal is the third appeal, the applicant is supposed to apply for certificate of point of law and apply for leave to appeal to the Court of Appeal.

He submitted further that, there is a triable issue fit for determination by the Court of Appeal. That the applicant through Misc. Land Appeal No. 3B of 2008 before Hon. Judge Mutungi, obtained a certificate of point of law whereby the Hon. Judge held that the issue of jurisdiction is what formed the base of contested application and hence, that was a clear point of law.

Mr. Nassoro argued further that since this Court has already decided that there is a legal issue of jurisdiction, this needs the attention of the Court of Appeal.

However, I have noted that in the applicant's affidavit, the issue of illegality raised was that; whether the Hon. Judge in dismissing the applicant's appeal on the issue of time limitation, denied the applicant a right to be heard, and whether the appeal was time barred. The advocate concluded by praying

for this Court to grant leave for the applicant to appeal to the Court of Appeal.

Responding to the applicant's written submission, Ms. Lilian Apolinary, strangely and surprisingly submitted totally in wrong direction that, the applicant as per chamber summons and submission is praying for extension of time to file an application for leave to appeal to the Court of Appeal. She proceeded to cite the principles governing the application for extension of time and whether the applicant has shown a good cause for delay.

However, as observed earlier, the counsel has totally misdirected herself because the application before me as per chamber summons supported by an affidavit of the applicant, is one for leave to the applicant to appeal to the Court of Appeal and not extension of time. The application for extension of time for leave to appeal to the Court of Appeal was through Misc. Land Application No. 781 of 2017 before Kilekamajenga, J which was granted on 15/3/2019. Therefore because it was wrongly submitted, I need not take much time on what was submitted by the respondent's counsel.

In written rejoinder, the counsel for the applicant enhanced the points raised in his submission in chief and also observed the misconception of the counsel for respondent through her submissions and through the respondent's counter affidavit.

Before analyzing the submissions and evidence on record, I will briefly give a background of the matter that prompted this application. The matter commenced before the Ward Tribunal of Kitunda whereby the respondent

and 101 others had lodged a complaint against the appellant. After the hearing, the respondent lost. The respondent appeared to the District Land and Housing Tribunal of Ilala where he won. Being dissatisfied with the decision of the District Land and Housing Tribunal, the applicant unsuccessfully appeared to this court whereby the appeal was dismissed. The applicant then filed an appeal to the Court of Appeal which was struck out for being incompetent because the applicant did not seek and obtain leave to appeal. The applicant tirelessly filed an application before this court praying for extension of time to file notice of appeal and leave to appeal to the Court of Appeal which was granted. He is now seeking leave to appeal to the same Court.

In determining this application, the issue which is important is whether the same has merit.

It is trite law that, for the court to grant leave to appeal to the Court of Appeal, the applicant has to establish by affidavit or otherwise that the intended appeal involves serious points of law which require the attention of the Court of Appeal.

This position on numerous times and in numerous cases was established by the Court, among the cases being the case of **British Broadcasting Corporation vs. Erick Sikujua Ng'maryo, Civil Application No. 135 of 2004, Court of Appeal of Tanzania at Dar es Salaam (unreported)**.

Furthermore, Section 47 (3) of the Land Disputes Courts Act, Cap 216 R.E. 2019 states that;

47(3); *"where an appeal to the Court of Appeal originates from the Ward Tribunal, the appellant shall be required to seek for the Certificate from the High Court certifying that there is point of law involved in the appeal"*.

Therefore, since the intended appeal originates from Kitunda Ward Tribunal, the applicant have to seek for the certificate on points of law from this court. Going through the records, the applicant has filed for certificate of points of law before this Court through Misc. Land Application No. 3B of 2008. In the said application, the applicant through his advocate Mr. Nassoro, moved this court to certify whether it is proper law for the Court to dismiss an appeal on the ground of time limitation without first giving the parties a right to be heard.

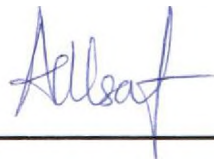
In his findings, Hon. Judge was of the view that there was an issue of jurisdiction to be determined and that was a pure point of law and went on to grant an application. From the above, it is obvious that the applicant has sought certificate of a point of law before this court as required by the law and the same has been granted.

On whether the applicant's intended appeal involves serious points of law, as per the records, submissions and affidavit of the applicant, I have gathered the following points of law;

- a) The issue of Jurisdiction.
- b) The issue of time limitation of the appeal before the appellate High Court.
- c) The issue of the applicant's right to be heard by the appellate High Court.

From the observation, I find that the applicant has raised points of law which has to be determined by the Court of Appeal during the hearing of the intended appeal.

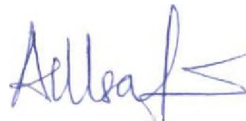
Taking into account the above analysis, the application is hereby granted.
Costs to follow the events in the appeal.



**A. MSAFIRI,
JUDGE
25/8/2021**

COURT:

Ruling delivered in Court Chambers in the presence of the respondent.



**A. MSAFIRI
JUDGE
25/8/2015**