

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO.475 OF 2020

(Arising from the decision of the High Court of Tanzania, Land Division at Dar es Salaam vide Land Appeal No. 12 of 2019, Originated from Land Application No.15 of 2018 in the District Land and Housing Tribunal for Mkuranga at Mkuranga)

ATUMANI HEMEDI MNYUSI APPLICANT

VERSUS

LATIFA ABDALAH KILERA *(Administrator of*

The Estate of the late Amandala HADIJA ABDALLAH

KILERA)..... **1ST RESPONDENT**

KABANGO ENTERPRISES **2ND RESPONDENT**

RULING

Date of last Order: 27.08.2021

Date of Ruling: 27.08.2021

A.Z.MGEYEKWA, J

This application is brought under section 47 (2) of the Land Disputed Courts Act, Cap. 216 [R.E 2019]. The applicant seeks leave to appeal to the Court of Appeal of Tanzania to impugn the decision of this Court in

Misc. Land Appeal No.12 of 2019. The application is supported by an affidavit deposed by Athumani Hemedi Mnyusi, the applicant. The respondent feverishly opposed the application, in a counter-affidavit sworn by Mr. Latifa Abdallah Kibera, the respondent.

When the matter was called for hearing on 15th April, 2021, the applicant. By the court order, the application was argued by way of written submissions whereas, the applicant filed her submission in chief on 30th April, 2021. On his side, the respondent's Advocate filed his reply on 17th May, 2021 and the applicant waived his right to file a rejoinder.

It was the applicant who started to kick the ball rolling. He urged this court to adopt the applicant's affidavit and form part of his submission. The applicant stated that he is dissatisfied by the decision of this court before Hon. Manyanda J in Land Appeal N0.12 of 2019. The respondent started with a long –winded background of the facts which led to the instant application which I am not going to reproduce in this application.

The applicant contended that he purchased the suit land from Zena Saidi in 2011 and in 2018 the respondent claimed ownership of the disputed land. He Further submitted that the Administrator of the Estate who had sold the land to the Applicant herein, had a dispute with the late Hadija Abdallah Kibera over the ownership of the said land suit, whereas

that the applicant had all the necessary documents to prove his ownership over the suit land. The applicant went on to argue the applicant bought the suit land from the original owner one Mwarami Mwinishehe and he had a good title and he tendered a piece of documentary evidence and the applicant started construction in 2011. The applicant claimed that a person without good title to the property cannot pass title to the transferee than his own. He added that it is the principle of the law that no one can give a better title than one who himself in possession. To bolster his position he referred this court to the case of **Farah Mohamed v Fatuma Abdallah** (1992) TLR 205 it was held that:-

"He who has no legal title to the land cannot pass good title over the same to another."

The applicant continued to argue that learned counsel for the applicant submitted further that documentary evidence is heavier than mere words. Fortifying his submission he cited the case of **Parters v Sunday Post Limited** [1958] 1 EA 424 (CAN).

The applicant did not end there, he argued that the respondent failed to prove that his ownership of the disputed land which forms part of the estate of the late Khadija Kibera. Insisting, he argued that the applicant was in occupation of the suit plot at the time of the alleged trespass thus

she believed that she owned the suit land legally. To support his submission he cited the case of **Jela Kalinga v Omari Karumwana** (1999) TLR 67 (CA).

On the strength of the above submission, the applicant beckoned this court to grant her application for leave to appeal to the Court of Appeal of Tanzania.

In his reply, the respondent valiantly contended that the applicant has established new facts that do not give room to the respondent to counter those new facts. He further submitted that there was no cogent evidence upon which the applicant relied to support the fact that the first occupier of the land in dispute was Mwalami Mwinishehe. The learned counsel for the respondent contended that it is evident that the first occupier of the land in dispute was Zainabu Shomvi. As thus Mwalami was not the first occupier but rather he was one of the beneficiaries of the estate of the late Zainabu Shomvi. To support his submission he referred this court to the evidence adduced in the trial tribunal in Land Application No. 15 of 2018. It was his view that the applicant had no legal title to pass. Supporting his submission, she cited the case of **Farah Mohamed Vs Fatuma Abdallah** (1999) TLR 205, the court held that:-

“He who has no legal title to the land cannot pass good title over the same to another.”

The learned counsel for the respondent continued to argue that Hadija Abdallah purchased the suit land on 30th June 2006 from one Ally Hemed Kibaga. He went on to submit that therefore the title that was passed to the respondent was valid for a reason that Zainab Shomvi’s family had a good title. He added that Zena Saidi had no good title to pass to the applicant. The respondent’s Advocate strongly argued that the applicant is trying to deploy delay tactics of instituting unreasonable appeal.

It was the learned counsel for the respondent's further submission that the principle of granting leave to appeal is well established in the case of **British Broadcasting Corporation v Eric Sikujua Ngi’maryo**, Civil Application No. 138 Of 2004 (Unreported). The Court of Appeal of Tanzania held that:-

“Leave is granted where the proposed appeal stands a reasonable chance of success or where but not necessarily, the pleading as whole reveal such disturbing features as to required guidance of the Court of Appeal.”

He also cited the case of **Selina Chibango v Finihas Chibango**, Civil Application No. 99 OF 2011 whereby the Court of Appeal of Tanzania held that:-

“The power of the Court under section 5 (1) of the appellate Jurisdiction Act to grant leave is discretionary, and like all discretion, it must be exercised judicially. As a general rule, leave to appeal from the order, in civil proceeding will naturally be granted were prima facie, it appears that there are grounds of appeal which merits serious judicial consider action, but where the order from which it is sought to appeal was made in exercise of judicial direction.”

On the strength of the above argumentation, the respondent beckoned upon this court to dismiss the application with costs.

Having heard the submissions of the learned counsel for the applicant and the respondent for and against the application, I will determine *whether the application is meritorious.*

It is trite law that leaves to appeal to the Court of Appeal is granted if *prima facie* grounds are meriting the attention of the Court of Appeal as it was held in the case of **Sango Bay v Dresdner Bank A.G** [1971] EA 17, it was held that:-

*" Leave to appeal will be granted where **prima facie** it appears that there are grounds which merit serious judicial attention and determination by a superior Court."*

Equally, in the case of **Gaudensia Mzungu v IDM Mzumbe**, Civil Application No. 94 of 1994 (unreported), the Court of Appeal of Tanzania held that:-

" Leave will be granted if, prima facie there are grounds meriting the attention and decision of the Court of Appeal."

These decisions are in consonance with the decision cited by the counsel for the respondent; was in *the case of **British Broadcasting Corporation v Eric Sikujua Ng'amaryo***, (supra) the Court of Appeal of Tanzania held that:-

"As a matter of general principle, leave to appeal will be granted where the grounds raise issues of general importance or novel point of law or where the ground of appeal shows prima facie or arguable appeal."

Equally, in the case of **British Broadcasting Corporation** (supra) the Court of Appeal of Tanzania held that:-

"... leave cannot be granted where the grounds of appeal are frivolous, vexatious or useless or hypothetical".

Applying the above holding, the Court of Appeal emphasized that the disturbing features must be in the form of serious points of law that warrant the attention of the Court of Appeal. Gathering from these decisions, it is clear that it is within this Court's discretion to refuse to grant leave where the Court is of the view that the application for leave falls short of meeting the requisite threshold for its grant. The same was held in the cited case of **Nurbhain Rattansi (supra) v Ministry of Water Construction Energy Land and Environment and Another**, Civil Application No. 3 of 2004 TLR [2005] 220 and in the case of **Saidi Ramadwani Mnyanga v Abdallah Salehe** [1996] TLR 7 4).

I am aware that in determining whether this court can grant leave or not, this court will do the same without assuming the power of the appellate Court as this court is bound to assume such power which is vested in the Court of Appeal of Tanzania. I have perused the applicant's affidavit and noted that the applicant on paragraph 4 of the applicant's affidavit alleged to have raised legal issues to be argued by the Court of Appeal of Tanzania. However, I have noted that there are no issues of general importance or novel point of law or where the ground of appeal shows prima facie or arguable appeal as held in the case of **British Broadcasting Corporation** (supra).

Nevertheless, the applicant in his written submission failed to move this court to determine his application for leave to appeal to the Court of Appeal of Tanzania since he concentrated to argue the imaginary grounds of appeal.

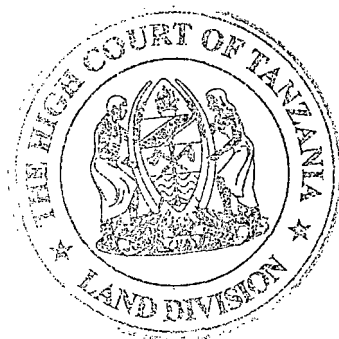
Having failed to surmount that hurdle, the Court cannot exercise its discretion by granting the applicant's application for leave to appeal to the Court of Appeal of Tanzania. Thus, this application is with no merit, I dismiss the application without cost.

Order accordingly.

Dated at Dar es Salaam this date 27th August, 2021.


A.Z. MGEYEKWA
JUDGE
27.08.2020

Ruling delivered on 27nd August, 2021 in the presence of both parties.




A.Z. MGEYEKWA
JUDGE
27.08.2020