

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 710 OF 2019

(Arising from the decision of this Court (Hon. Mgonya, J) in Land Appeal No. 47
of 2018 dated 29th March, 2019)

**THE REGISTERED TRUSTEES OF WIPO
MISSION INTERNATIONAL APPLICANT**

VERSUS

GALDINO NYUMAYINZU RESPONDENT

RULING

Date of Last Order: 13/08/2021 &

Date of Ruling: 20/08/2021

S.M. KALUNDE, J.:

The applicant filed Land Application No. 235 of 2016 against the respondent in the District Land and Housing Tribunal for Temeke District at Temeke ("**the Tribunal**"). On 09th March, 2018, the suit was disallowed with costs. Being out of time, the applicant lodged Misc. Land Case Application No. 316 of 2019 for extension to appeal to this Court against the decision of the tribunal. This Court (**Hon. Opiyo, J**) granted the application on 29th November, 2019. After the grant of Misc. Land Case Application No. 316 of 2019, the applicant lodged Land Appeal No. 47 of 2018. On 29th March 2019, the

appeal was also dismissed. The applicant has now filed the present application seeking for leave to lodge an appeal to the Court of Appeal.

The application is made under section 5(1) of the **Appellate Jurisdiction Act, Cap. 141 R.E. 2019** and rules 45(a) and 47 of the **Court of Appeal Rules, 2009** and is being supported by an affidavit and a supplementary affidavit both sworn by Mr. Francis Raphael Nkoka, learned counsel. In response, the respondent filed a counter affidavit and a reply to the supplementary affidavit objecting to the application.

The merits or otherwise of the application was argued by way of written submissions. Submissions of the applicant were prepared and filed by **Mr. Pasensa Dickson Kurubone**, learned advocate, whilst those of the respondent were drawn and filed by learned counsel **Mr. Sypriano Silungwe**. Submissions were dully filed in compliance with the schedule ordered by the Court.

Through the affidavit and a supplementary affidavit, and written submissions, Mr. Kurubone urged this Court to hold that, the following issues raised points of law worth of consideration by the Court of Appeal:

- (1) That, the Trial judge erred in law and facts by uphold the Decision of the District Land and Housing Tribunal, only with a reason*

that, it was the trial Tribunal which was placed better to assess the evidence than the Appellant Court which merely reads the trial Tribunal records, Hence prejudiced the right to the Appellant since the Appealed records could not be considered much from the early Appellant judge's notion and view especially the Appellant's evidence;

- (2) That, the procedure for survey was not followed since the Appellant's land is surveyed, and no surveyor was called to testify or to trace the boundaries to prove ownership over the piece of land;*
- (3) That, the Appellant Court erred in law and fact by uphold the decision which was reached by relying on the evidence of the land officer who testifies against the Respondent and the Municipal Council which made survey while he was not an expert in survey and was not involved in survey exercise neither was sent /had office blessings to represent the Municipal Council to act on its behalf as witness and who was not able even to trace a single beacon on the disputed premises;*
- (4) That, the Appellant court erred in law and fact by failure to consider the grounds of Appeal but just upheld the Tribunal decision's which lead to unjust decision against the Applicant; and*
- (5) That, both the tribunal and the High Court erred in Law by conducting the case in*

contravention of Regulation 19 (2) of the Courts (District Land and Housing Tribunal) Regulations, GN. No. 174 of 2002.

Based on the above listed issues, the counsel insisted that there are triable issues of illegality that deserves the attention of the superior Court. He thus prayed that the application be granted.

In rebuttal, Mr. Silungwe canvassed in discussing the raised grounds at length. He went on to conclude that the applicant has failed to raise any serious point of law worth of consideration by the Court of Appeal. He thus prayed that the application be dismissed with costs.

Having gone through the records and consider the submissions made by both parties, the crucial issue for my determination is whether the present application is merited.

It is a settled principle of 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 which require attention of the Court of Appeal. This position was stated in among other authorities, the case of **British Broadcasting Corporation vs Eric Sikujua Ng'maryo** (Misc. Civil Appl. No.138 of 2004) [2005]

TZCA 93; (08 September 2005) where the Court of Appeal stated:

*"Needless to say, leave to appeal is not automatic. It is within the discretion of the court to grant or refuse leave. The discretion must, however judiciously exercised and on the materials before the court. As a matter of general principle, leave to appeal will be granted where the grounds of appeal raise issues of general importance or novel point of law or where the grounds show a prima facie or arguable appeal (see **Buckle v Holmes** (1926) ALL E.E. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious, or useless or hypothetical, no leave will be granted"*

Further to that in **(i) Harban Haji Mosi (ii) Shauri Haji Mosi v. (i) Omar Hilal Seif (ii) Seif Omar**, Civil Reference No. 19 of 1997 (unreported) cited with approval in **British Broadcasting Corporation vs Eric Sikujua Ng'maryo** (Supra), the Court of Appeal stated–

"Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceedings as a whole reveal such disturbing features as to require the guidance of the Court of Appeal. The purpose of the provision is therefore to spare the Court the specter of unmeriting matters and to enable it to give adequate attention to cases of true public importance."

In the present case, through his supplementary affidavit the applicant added the sixth complaint that, both this Court and the trial tribunal erred in law by failure to consider the composition of the trial in contravention of Regulation 19 (2) of **the Courts (District Land and Housing Tribunal) Regulations, GN. No. 174 of 2002**. The effect of failure to comply with the respective mandatory proceedings of the law is to nullify the proceedings at the tribunal and hence before this Court. Based on that, I am satisfied the issue raises a point of law of significant importance worthy of consideration by the Court of Appeal.

In the final result and for the foregoing reasons therefore, the application succeeds. Accordingly, leave to appeal to the Court of Appeal against the judgment of this Court in **Land Appeal No. 47 of 2018** is hereby granted. The applicant shall have his costs.

It is so ordered.

DATED at DAR ES SALAAM this 20th day of AUGUST, 2021.




S.M. KALUNDE

JUDGE