

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

MISC. LAND CASE APPLICATION No.154 OF 2021

(Arising from the Judgement and Decree of the High Court Land Division in
Land Appeal No. 233 of 2019 dated 26/02/2021)

**ATIBU MOHAMED KITUTU.....1ST APPLICANT
SAID MOHAMED MUUNILWA2ND APPLICANT
ALLY MUUNILWA3RD APPLICANT
ABDALLAH MKETO.....4TH APPLICANT
ATIBU MOHAMED MUUNILWA.....5TH APPLICANT
MUSA MOHAMED MUUNILWA.....6TH APPLICANT
RAJABU MUSA MUUNILWA.....7TH APPLICANT
RAMAZANI OMARI MBOMBWE8TH APPLICANT
JAMAL HATIBU MUUNILA9TH APPLICANT
OMARI HAMISI MSEKETU10TH APPLICANT**

VERSUS

**MOHAMED ALLY.....1ST RESPONDENT
BWANA LIPALA.....2ND RESPONDENT
BWANA LUKOTA.....3RD RESPONDENT
SUDI MTOPA.....4TH RESPONDENT
BWANA ALLY MTUGUMWE5TH RESPONDENT
BWANA NYARUANDA.....6TH RESPONDENT
NURUDINI UPONDA7TH RESPONDENT
SALEHE NDEKIO8TH RESPONDENT
BWANA MKOMAKULINGA.....9TH RESPONDENT
KASSIM KILINDO10TH RESPONDENT
SALUMU NANDAJA.....11TH RESPONDENT
KAPOLO MUBA12TH RESPONDENT
BITIALLY MAGUNGA13TH RESPONDENT
BWANA MCHAYA14TH RESPONDENT
BWANA NGUNYWANE.....15TH RESPONDENT
OMARI TINDWA16TH RESPONDENT
BWANA NGOBO.....17TH RESPONDENT
BWANA NDEMBO.....18TH RESPONDENT**

MAMA KOKA.....	19TH RESPONDENT
BWANA ISSA.....	20TH RESPONDENT
ISSA LUKUTA.....	21ST RESPONDENT
BWANA KALUNGUYEYE.....	22ND RESPONDENT
BWANA SHIJA MABAYA.....	23RD RESPONDENT
MZEE MOHAMED.....	24TH RESPONDENT
MZEE MAKUANGU.....	25TH RESPONDENT
BWANA MPOGO.....	26TH RESPONDENT
BWANA ULONGO.....	27TH RESPONDENT
BWANA NGULANGWA.....	28TH RESPONDENT
BIBI MMAKUA.....	29TH RESPONDENT
MPARE WA MBUYUNI.....	30TH RESPONDENT
SULTANI SULTANI MGWAMI.....	31ST RESPONDENT
HAMADI TINDWA.....	32ND RESPONDENT

Date of last Order: 21.11.2021
Date of Ruling: 06.12.2021

RULING

V.L MAKANI, J:

The applicants named above have moved this Court under section 47 (1) of the Land Courts Act, CAP 216 RE 2019. They are seeking for leave to appeal to the Court of Appeal of Tanzania against the decision of this Court in Land Appeal No.233 of 2019 (Hon. Maige, J)(as he then was). The application is supported by the joint affidavit sworn by the applicants.

With leave of the court the application was argued by way of written submissions. The parties drew and filed their submissions personally.

Submitting in support of the application, the applicants said they have been aggrieved with the decision of this court delivered by Hon. Maige, J (as he then was) and that they are intending to appeal to the Court of Appeal of Tanzania. That in the said Land Appeal No.223 of 2019, the honourable judge failed to consider properly that the applicants established in their pleadings and evidence that the disputed area was about 100 acres. That they clearly stated that the respondents trespassed in the said land unlawful. That they asserted clearly that there are cemeteries in the suit plots where their relatives were buried before Operation Vijiji. That both the Tribunal and the High Court contradicted the evidence and held that the whole land was 600 acres and that respondents trespassed only on 100 acres.

They said that the second intended ground of appeal is that the honourable Judge asserted that from 2010 when respondents trespassed the suit land to 2016 is 16 years while it is 6 years. They relied on the case of **Said Salum vs. Republic, Criminal Appeal No.499 (CAT-DSM)** (unreported). They prayed for the application to be allowed with costs.

In reply, respondents said that section 5(1) (c) of the Appellate Jurisdiction Act, Cap 141 RE 2019 and section 47 (2) of the Land Disputes Courts Act does not expressly provide for factors to be considered in granting or refusing leave to appeal to the Court of Appeal. That there are several authorities providing for factors to be considered in granting leave to appeal. They said matters to be considered among others is when there is a point of law which is not the case in this application. That there is nothing arguable according to paragraph 1 to 7 of applicants' affidavit. The applicants relied on the case of **Rajabu Kadimwa Ngeni & 7 Others vs. Idd Adam [1991] TLR 38**. They insisted that the issue of disputed 100 acres is not a serious issue, and it is not a point of law to be determined by the Court of Appeal. That the issue was long settled by the testimony of both parties. That in the 8th and 9th pages of the Tribunal's proceedings **PW1** one Atibu Mohamed Kitutu testified that the disputed land is over 600 acres. That even one Rajabu Musa Munilwa who is one of the appellants testified that the disputed land is 600 acres.

On the second issue they said that in the District Tribunal **DW4, DW10, DW11** and **DW17** testified that they occupied land since

2000,2002,2003, 2004 and other respondents occupied the years afterwards. They said **PW1** testified that the respondents have been living in the suit land for ten years. That if the respondents were in the suit land uninterrupted for 10 years and the land appeal was filed in 2016, the respondents then asked whether that makes it 16 years? They insisted that there is no serious point of law to be determined by the Court of Appeal of Tanzania. Thus, they prayed for this application to be dismissed with costs.

The applicants did not file submissions in rejoinder.

Leave to appeal to the Court of Appeal is granted 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 rationale behind is to spare the Court of Appeal of stream of matters, which have no merit, and or which have already been dealt with by the lower courts.

In the case of **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo, Civil Application No. 133 of 2004** (unreported) as

follows:

*"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, be judiciously exercised 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 a novel point of law or where the grounds show a prima facie or arguable appeal (see: **Buckle v Holmes** (1926) ALL E.R. Rep. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted".*

It is, therefore, the duty of the applicants herein to demonstrate the serious points of law that need to be considered by the Court of Appeal (see **Simon Kabaka Daniel vs. Mwita Marwa Nyanga'nyi & 11 Others [1989] TLR 64**).

I have considered the arguments by the parties and having gone through the affidavit, counter affidavit, together with the available records in this application, the point for determination is whether the applicants have advanced points of law which needs the intervention of the Court of Appeal.

There are two points which the applicants alleges that they were not well addressed in this court during appeal. The first is the size of the disputed land and the second is whether or not the respondents had

adverse possession over the suit land against applicants. Going through the records, the first and the second issues were well covered in the 5th and 6th pages of the typed judgment of Land Appeal No.233 of 2019. The court clearly stated that the appellants/applicants herein testified at the Tribunal that the suit property was 600 acres. Further appellants/applicants herein testified the same at 8th and 9th pages of the tribunals proceedings that the suit land is 600 acres. Therefore, the issue of size of the suit land was well covered basing on applicants claim and evidence, therefore it does not attract the attention of Court of Appeal of Tanzania.

The second ground is also well covered at page 6 of the judgment save that there is only a typing error which does not attract attention of the Court of Appeal of Tanzania. In the said page of the judgment, the honourable judge observed that appellants admitted that respondents trespassed the suit land in 2010 and the suit at the tribunal was filed in 2016. The difference was noted as 16 years instead of 6 years. It was simply a typing error which can be rectified by the High Court Land Division. Rectification of this kind do not alter the merit of appeal. Such kind of typing errors cannot be referred to the Court of Appeal as they are not serious one.

In that respect, I am of the considered view that, there is nothing serious on the part of the law that needs the attention of the Court of Appeal as the raised issues were well attended by this court.

For the above reasons, the application for leave to appeal to the Court of Appeal has no merit and it is hereby dismissed with costs.

It is so ordered.


V.L. MAKANI
JUDGE
06/12/2021

