

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC.LAND CASE APPLICATION NO. 483 OF 2021

JOSEPH ZACHARIA.....APPLICANT

VERSUS

YOHANA ALBERT KINYEMBA.....RESPONDENT

RULING

10/11/2021 & 08/12/2021

Masoud, J.

The applicant is seeking leave to appeal to the court of Appeal against the decision of this court delivered on 2/12/2020 as per Hon. Opiyo J. in Land Appeal No. 21 of 2019

The application was made under, among other things, S.47(2) of the Land Disputes Courts Act, Cap 216 R.E. 2019. It was supported by an affidavit of the applicant. The application was however apposed by the respondent who filed a counter affidavit in that respect. The application was argued by filing written submissions pursuant to order of this Court dated 20/10/2021. As there were points of preliminary objection raised, the court ordered the objection as well as the application to be heard by filing written submissions at the same time.

It is only the respondent who filed written submission in respect of the preliminary points of objection raised, namely, that, the application is defective for failure to attach the ruling, that, the verification clause is incurably defective, and that the application is incompetent for citing inapplicable provision of the law. The respondent did not file any reply as ordered by this court.

I have considered the submissions on the preliminary points of objection. As to the first objection, it seems to me that the respondent does not dispute that the applicant was granted leave to file the present application out of time. Rather, his concern is in the failure of the applicant to attach the copy of the ruling to the application. However, the applicant has shown efforts he made in following up the copy of the ruling in vain by attaching the copy of the letter in that respect.

In view of the above, I do not think that the applicant has to be punished for failure to attach the ruling. In any case, I do not think that the omission is fatal and if it has prejudiced the respondent.

As to the second point, I have considered the relevant submissions on the record. I understood the respondent as referring to para 6 of the affidavit of the applicant which appears in the verification clause as matters of the deponent's own knowledge and also matters of information supplied to him by his advocate. The worst consequences would be to expunge the relevant paragraph, which would in any way not affect the competence of the affidavit.

With this reasoning, I do not find merit in the application and would proceed to overrule the same. As the last point of objection was not argued, I would consider it abandoned.

As to the substantive application before me, I have taken trouble of considering its merit whilst having regard to the affidavit and counter-affidavit on the record as well as the rival submissions of the parties. I must admit that parties have very well referred me to a good number of relevant authorities as to principles governing granting or otherwise of application for leave to appeal to the Court of Appeal. Of significance is that the applicant must be able to show in his affidavit that the intended appeal has some merits whether factual or legal; see **Wambele Mtumwa Shamte VS Asha Juma, Civil** Application No. 45 of 1999 (CAT unreported), or stands reasonable chances of success or that the proceedings as a whole reveal such disturbing features; or that there is a legal point worth the consideration of the Court of Appeal.

The question is whether the affidavit of the applicant supporting the application reflects the above principles in any way. I have scrutinized the affidavit. It tells the background of the present application. It tells that the respondent was aggrieved and appealed to this Court and had this court resolving the appeal in his favour. And also stated that the applicant is aggrieved by the decision of this court, and has taken steps for appeal purposes. The affidavit also tells about the extension sought and granted and hence the present application as the leave is required in order to appeal to the Court of Appeal. It is at Paragraph 7 that the

deponent refers to grounds set forth in para 6 whilst para 6 has not mentioned or given details of any grounds so to speak.

In my finding therefore, the affidavit has not disclosed anything that is in anyway reflective of the above-mentioned principles. It has not indicated any ground or point upon which one can tell that the intended appeal has merits. It has also not revealed any disturbing features and so on and so forth.

In the results, and for the above reasons, the application has no merits and is hereby dismissed with costs.

Ordered accordingly.

Dated at Dar es Salaam this 8th December, 2021.


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B.S. MASOUD
JUDGE

