

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

AT DAR ES SALAAM

MISCELLANEOUS LAND CASE APPLICATION NO. 727 OF 2021

(Arising from Misc Application No.35 of 2017 of District Land and Housing Tribunal of Temeke)

ADAM PAULO KIWIA.....APPLICANT

VERSUS

NASRA JOSHUA RHOBI.....RESPONDENT

RULING

10/11/2021 & 08/12/2021

Masoud, J.

The applicant is aggrieved by the decision of this court as per Makani J.in Land Appeal No.94 of 2019 dated 12/10/2020. He is seeking leave of this court to challenge the said decision in the Court of Appeal of Tanzania. In his affidavit supporting the Application, the applicant is saying that the decision sought to be appealed against is in the favour of the respondent. The applicant and respondent were purchasers of a piece of land which was sold twice by the vendor at diverse dates.

Reasons adduced by the applicant are as follow: that, the decision of the trial tribunal is biased as it did not thoroughly examine exhibits; that, the

Chairman of the tribunal just made a decision based on his mere opinion; and that the decision of this court disregarded the grounds of appeal raised by the applicant in his memorandum of appeal. He mentioned one such grounds as the failure of this court to find that the trial tribunal disregarded the credible testimony of PW.2 who was, as a tenant, told by the vendor to vacate the suit property to enable selling of the property to the applicant. In addition, the applicant intends to raise a ground of appeal that: "*The High Court erred in law and facts to analyse exhibit tendered in the tribunal by the appellant.....*"

In his counter affidavit, the respondent opposed the Application. He stated that the disputed property was not sold twice as the vendor of the property testified against the applicant. The said vendor had told the tribunal that the applicant only used to borrow money from the vendor. The applicant also stated that the tribunal did examine the evidence and arrived at a just decision.

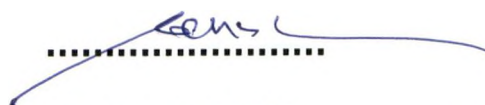
In addition, the respondent averred that this court considered the ground of appeal and arrived at a just decision. He further disputed that the PW..was a key witness as in his view the key witness was the vendor. Finally, he stated that this court exercised its power of re-examining the evidence afresh and arrive at a just decision.

The rival submissions were not far from the averments in the affidavit and counter affidavit save for authorities relied on. While the applicant seemingly argue that there is an arguable appeal involving legal points worth of consideration, to wit, failure to find that the tribunal did not analyse the exhibits and consider the evidence of one of the key witnesses namely PW.2; the respondent's counsel seem to argue on the opposite.

Indeed, as is clear in the affidavit the applicant raised the above points of which the respondent says that they do not merit as legal point worth of consideration neither do they raise an issue of legal importance. Mindful that am not competent to determine on the merit of the points at this stage, I find the rival submissions as necessarily pointing a finding that there is an arguable appeal worth of consideration by the CAT.

In the result, the Application is meritorious and the leave to appeal to the Court of Appeal is accordingly granted. The costs shall be in the cause.

Dated at Dar es Salaam this 8th December 2021.



B.S. MASOUD

JUDGE

