

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

MISC. LAND CASE APPLICATION NO. 33 OF 2022

(Arising from the decision of High Court of Tanzania (Land Division) at Dar Es Salaam in Land Appeal No. 258 of 2019 dated 25/ 11/2020, by Hon. Maghimbi, J)

METHOD MILAMBO.....APPLICANT

VERSUS

AIKOS NAMUNDUJEE.....RESPONDENT

R U L I N G

Date of Last Order: 21. 04. 2022

Date of Ruling: 24. 05. 2022

T. N. MWENEGOHA, J.

The applicant is seeking for a leave to appeal to the Court of Appeal of Tanzania, against the whole decision of this court, given by Maghimbi J in Land Appeal No. 258 of 2019. The case originated from Land Application No. 51 of 2017, heard by the District Land and Housing Tribunal for Kilombero/Ulanga District. The parties are in dispute over a piece of land, located at Keituu, Kisawasawa, Kilombero District in Morogoro Region. The land is measured 3 1/3 acres and the applicant is claimed to have invaded 1 1/3 acres out of 3 1/3 acres.

The respondent Aikosi Namundujee was the one who lodged the application against the applicant herein above, Method Milambo. The District Land and Housing Tribunal for Kilombero/Ulanga District decided in favour of Method Milambo and was declared as the lawful owner of the land in dispute. Aikos

Namundujee filed an appeal before this court and it was successful and the decision of District Land and Housing Tribunal for Kilombero/Ulanga District was set aside. Hence this application by the applicant, Method Milambo.

The application was made under Section 47(2) of the Land Disputes Courts Act, Cap 216 R. E. 2019 and 5(1) (c) of the Appellate Jurisdiction Act, Cap 141, R. E. 2019. The same was accompanied by the affidavit of the applicant, Method Milambo. The application was heard by way of written submissions. Advocate Kweka appeared for the applicant and the respondent was represented by Advocate Hassan Chande.

Submitting in favour of the application, the applicant's counsel was of the view that, the judgment of Hon. Maghimbi J contains illegalities that need to be corrected by the Court of Appeal of Tanzania. He insisted that, even the decision of District Land and Housing Tribunal for Kilombero/Ulanga District has irregularities, hence the leave is required so that the Court of Appeal of Tanzania can deal with the illegalities and irregularities contained in the two decisions, that of the High Court and of District Land and Housing Tribunal for Kilombero/Ulanga District. That, after all, if the application is allowed, the applicant has likelihood of succeeding in his intended appeal. In his submissions he cited several cases, including the case of **Marwa Mahende versus Republic, Criminal Appeal No. 133 of 1994, Court of Appeal of Tanzania at Mwanza, (1998) TLR No. 249.**

In reply, the respondent's counsel strongly challenged the instant application and insisted that the prayers contained in the applicant's chamber summons are not justifiable. He insisted that, the same should be dismissed with costs.

In his rejoinder, the applicant's counsel reiterated his submissions in chief and insisted that, owing to the reasons given in his submissions in chief, a

• leave to appeal to the Court of Appeal is necessary. Hence this application should be allowed.

I have considered the arguments of the applicant as well as the affidavit in support of the application. Also, the submissions of the respondent's counsel as well as the counter affidavit opposing the instant application. The question for determination is whether the application has merit.

It is settled that, three important issues need to be considered before allowing an application for leave to appeal to the Court of Appeal of Tanzania as follows;- (i) the rights of parties against who the decision of court which the intended appeal is sought, (ii) whether the decision in question is an appealable and (iii) there must be valid grounds as opposed to chance of success that the party wishes to appeal see **David Naburi as the Administrator of the Estate of the late Maeda Naburi versus Stephen Sangu, Misc. Land Application No. 960 of 2017, High Court of Tanzania, Land Division, Dar Es Salaam, [unreported]**.

In my view, the applicant has met all these the three conditions above listed. Starting with the first precondition that, the impugned judgment of Maghimbi, J. Land Appeal No. 258 of 2019 is appealable, and the applicant has a right to challenge the said decision by way appeal. He has genuine reasons for that and he should be given a forum to argue his appeal.

In the end, the leave is hereby granted without costs.

It is so ordered.




T. N. MWENEGOHA
JUDGE
24/05/2022