

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

**MISC LAND APPLICATION NO. 555 OF 2020**

(Arising from the Judgment of the High Court in Land Appeal No. 165 of 2015 originated from the decision of the District Land and Housing Tribunal in Land Case No. 35 of 2012)

**RESTITUTA FRANK MSONGOLE ..... APPLICANT**

**VERSUS**

**MICHAEL NGAYA SHOO ..... RESPONDENT**

**RULING**

*Last Order: 26/7/2021*

*Ruling Date: 12/8/2021*

**A. MSAFIRI, J.**

This application is brought under Section 47 (1) of the Land Disputes Courts Act, Cap 216. The applicant seeks leave to appeal to the Court of Appeal against the judgment of this Court in Land Appeal No. 165 of 2015 dated 30.6.2017.

Before looking into the application before me, briefly, the background of this matter is as follows; the applicant instituted the land case before the District Land and Housing Tribunal of Kibaha claiming that her land (disputed land) was trespassed, occupied and sold to one Michael Ngaya Shoo (now the respondent). Upon hearing the parties, the District Land and Housing

Tribunal declared the applicant the rightful owner of the disputed land. Aggrieved, the now respondent appealed to this Court in Land Appeal No. 165 of 2015, and the case was decided in favour of the respondent whereby the decision, judgment and decree of the District Land and Housing Tribunal was quashed and set aside. The applicant, aggrieved with judgment and decree of the High Court, instead of immediately filing for intention to appeal to the Court of Appeal, she filed a fresh land application at Kibaha District Land and Housing Tribunal.

After being correctly advised, the applicant started seeking an extension of time before this Court to file notice of appeal and leave to appeal to the Court of Appeal out of time. Initially, the applicant filed before this Court an application which was admitted as Miscellaneous Land Application No. 13 of 2018 but the same was struck out for being defective. After that, the applicant tirelessly, filed another application before this court i.e. Miscellaneous Land Application No. 704 of 2019 whose ruling was delivered on 18<sup>th</sup> September 2020 and her prayers for extension of time to file notice of appeal and application for leave to appeal out of time were granted. The court ordered that the notice to appeal and application for leave to appeal should be filed within 14 days from the date of the extraction of the said order which was 24.9.2020. The applicant filed the application which is before me on 28.9.2020 hence the same is within the time prescribed by the Court.

The hearing of this application by consent of parties and leave of the court was disposed by way of written submissions. The applicant appeared in

person while the respondent was represented by Mr. Frank Michael, Advocate.

In her submission, the applicant prayed for the contents of her affidavit to form part of her submissions. She mostly, reiterated what was in her affidavit. She stated further that, the intended appeal to the Court of appeal being the second appeal, the appeal is not automatic, rather the applicant must seek leave of this Court.

She asserted that, being aggrieved with the judgment and decree of this Court, the applicant is of the view that she has sufficient grounds on appeal to the court of appeal. She proceeded to narrate the intended grounds of appeal as follows: -

- (i) That the Hon. Court did not consider the fact that the applicant had been in peaceful occupation of land in dispute since 1998 when she purchased the same from one Rukia Mshamu, until 2010 when the respondent alleges to have purchased the same from one Mussa Mwimbe Joseph.*
- (ii) That the Hon. Court did not properly consider that the question of boundaries of the applicant's land measuring four acres was fully determined by the District Land and Housing Tribunal especially when the applicant did prove that she was cultivating the land in dispute way back from 1998.*
- (iii) That the Hon. Court did not consider as to whether the alleged seller (Mussa Mwimbe Joseph) had a good title to pass to the respondent and he (seller) admits that he had inherited that said piece of land*

*from his father, but never proved that he was the administrator of the estate of his father.*

The applicant argued that the narrated grounds of appeal are issues of general importance for determination by the Court of appeal, and hence, she prayed for this Court to grant leave of appeal to appeal to the Court of Appeal.

In the reply, the respondent through his advocate, Mr. Frank Michael, briefly submitted that it is cardinal principal of law that, leave to appeal shall be granted only if the ground of appeal raise issues of general importance or a novel point of law or whether the grounds of appeal show a prima facie or arguable appeal. Mr. Michael cited the case of **British Broadcasting Corporation vs. Erick Sikujua Ng'maryo**, Civil Application No. 135 of 2004, Court of Appeal of Tanzania at Dar es Salaam (unreported).

Mr. Michael quoted the intended grounds of appeal which were narrated by the applicant and argued that the said grounds are not pure points of law, but they are facts which was determined by the appellate Court herein after, this Court during the hearing of the appeal. He asserted that the applicant's grounds of appeal does not raise issues of general importance or novel point of law or even show a prima facie arguable appeal to warrant this Court to grant her a leave to appeal to the Court of Appeal. The respondent prayed for this court to dismiss this application with costs.

In rejoinder, the applicant, submitting on the issue of points of law as requirement for this court to grant leave to appeal, she contended that, the respondent's argument is misconceived since the applicant's case arise from

the District Land and Housing Tribunal, it does not need certificate on point of law to appeal to the Court of Appeal.

The applicant reiterated her submissions in chief and argued that, she has raised an issue as to whether one Mussa Mwimbe (the then 2<sup>nd</sup> respondent in the District land and Housing Tribunal) had a good title to pass to the respondent (the 1<sup>st</sup> respondent), for the then 2<sup>nd</sup> respondent had never been appointed as an administrator of the estate of a property which is a subject of the dispute. She prayed for this court to grant the application.

Having read the submissions for and against the application, I will determine whether the application is meritorious.

It is trite 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 was correctly stated by the counsel for respondent in his written submission and I agree with him. This position was stated in among other authorities, the case of **British Broadcasting Corporation vs. Eric Sikujuwa Ng'maryo (supra)** where it was stated that;

*"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. However, where the grounds of appeal are frivolous, vexatious, or useless or hypothetically no leave will be granted"*

Looking closely at the affidavit of the applicant, I find that the same does not establish whether the intended appeal involves serious points of law which require the attention of Court of Appeal. The affidavit simply narrates the applicant's journey to seek justice from the institution of the dispute before the Land Housing Tribunal to the present application before me. At the end of the affidavit, the applicant simply states that she is of the view that there are matters which need to be dealt with by the court of appeal and since it is a legal requirement to obtain leave, she has filed this application.

However, in the submission in chief and rejoinder, the applicant contended that she has raised issues which need to be determined and she proceed to state the three intended grounds of appeal which I have already quoted herein above. Considering that the applicant is layman who was representing herself, I was forced to look into the raised intended three grounds of appeal and determine whether these grounds passed the test set out in the case of **British Broadcasting Corporation vs. Erick Sikujua Ng'maryo** (supra) and other numerous cases establishing the same principle. Having cautioned myself on determining the merits or otherwise of the substantive issues before the appeal itself is heard as it was warned by the Court in the case of **Jirey Nestory Mutalemwa vs. Ngorongoro Conservation Area Authority**, Civil application No. 184 of 2016 (CAT, Arusha Registry) (unreported), I will confine myself to the determination of whether the proposed grounds raises an arguable issue(s) before the Court of Appeal in the event leave is granted.

From the intended grounds, admittedly, they may not appear to have contained any serious point of law but the applicant who is a layman is not to blame. As it was observed in the case of **Jirey Nestory Mutalemwa vs. Ngorongoro Conservation Area (supra)**, interest of justice demands Courts to seriously indulge themselves on the materials before them with a view of understanding the essence of the dispute and issues involved in a matter before them. Therefore, from the said intended grounds, I find that there are issues of importance which are as follows; first, there is an issue of identification of boundaries on the disputed land, second, the issue of establishing the owner or possessor of a good title on the disputed land and third, the issue of whether the applicant who was also an applicant before the trial tribunal, proved her case by the standard required in civil litigations.

By closely examining the intended grounds, I find that the applicant has raised issues of importance which are matters of law worth being investigated by the Court of Appeal during the hearing of the intended appeal.

On that basis, I hereby grant leave to the applicant to appeal to the Court of Appeal against the judgment of this Court in Land Appeal No. 165 of 2015. Costs to follow the event in the appeal.

It is so ordered.



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**A. MSAFIRI,  
JUDGE.**

**12/8/2021**