

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 199 OF 2020

DORA MUHONI (Legal Representative

of the late **LUCY MKWEMA**)

APPLICANT

VERSUS

FINCA TANZANIA LIMITED

1ST RESPONDENT

VONJA YOHANA

2ND RESPONDENT

MAJEMBE AUCTION MART

3RD RESPONDENT

IOHASHI YUDA

4TH RESPONDENT

KURWA BAKARI

5TH RESPONDENT

(Arising from the decision of the High Court of Tanzania at Land Division Land
Appeal No. 112 of 2018 dated 23rd March 2018)

RULING

Date of Last Order: 27/10/2021 &

Date of Ruling: 16/11/2021

A. MSAFIRI, J:

The applicant is aggrieved by the decision of this Court in Land Appeal No.112 of 2018 delivered on 23rd March 2020 by Hon. Makani, Judge. She intends to pursue an appeal to the Court of Appeal to challenge it. Hence she has filed the present Application seeking to be granted leave to appeal to the Court of Appeal under Section 47(1) of the Land Disputes Courts Act Cap. 216 R.E 2002 and Section 11 of the Appellate Jurisdiction Act, Cap 141 R.E 2002. The chamber summons to this Application is supported by the affidavit of the applicant Dora Muhoni.

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The matter was scheduled to be heard by way of written submissions. The applicant's submission was drawn and filed by Lightness Raimos, learned Advocate from Tanzania Women Lawyers Association (TAWLA) while the 1st and 5th respondents' submission was drawn and filed by learned Advocate Akwila Wilbard and the 2nd and 4th respondents represented themselves.

In her submission, Ms. Raimos stated that having gone through the Application and conducted some thorough research, she has realized that the present Application lacks points of law which calls for the determination of the Court of Appeal. So in order to save valuable time of the court, she prayed for this matter to be struck out without costs.

Mr. Akwila on his part submitted that, he agrees with the applicant's counsel in her submission that, the Application lacks merit. He added that the Application contains a mere statement of complaint with regard to the judgment of the trial Tribunal and the appellate Court without indicating any serious matters which intends to be raised as grounds of appeal, or any arguable points of law for consideration by the Court of Appeal. He stated that the Application lacks merit to be entertained therefore it should be dismissed with costs.

On their part, the 2nd and 4th respondents submitted briefly in support of the Application. They stated that on submission by the applicant, they do not object her prayers and asked for the Application to be struck out without costs.



The 3rd defendant did not file any submissions as the matter was argued in her absence after she failed to appear before the court after being summoned twice and the proof of service was supplied to the court.

In rejoinder, the applicant's counsel reiterated her submissions and insisted that the Application should be struck out without costs.

Having gone through the learned counsels submissions over the instant Application together with the affidavit accompanying the chamber summons, it is trite law that granting the leave to appeal to Court of Appeal is not automatic. There are conditions which have to be met and considered by the court before granting the same. The conditions has been set and reiterated in different judicial decisions which I am obliged to consider. In the case of **Rutagatina C.L. vs. The Advocates Committee and Clavery Mtindo Ngalapa**, Civil Application No. 98 of 2010, the Court stated that:

"An application for leave is usually granted if there is good reason, normally on a point of law or on a point of public importance that calls for this Court's intervention."

In reliance to the above authority, those good reasons to call for the intervention of the Court of Appeal must be on point of law which have to be clearly indicated in the affidavit to the Application. In this case, the perusal of the whole file reveals that the applicant affidavit on records do not reveal good reasons by which to move this Court to grant the the leave to appeal. The applicant has failed to indicate points of law or issues

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of such importance which are intended to be addressed to the Court of Appeal or matters which needs the intervention of the same.

The applicant's counsel prayed for the matter to be struck out without costs and there is no objection from the respondent except for the costs. The important question is whether the Application can be struck out or dismissed. It is my view that, the court's discretion to dismiss or strike out a case depends on the nature and the stage which the case has reached at a particular time.

It is the requirement of the law that cases which has not been heard on merit but are incompetent for one reason or another have to be struck out instead of being dismissed. In the case of **Cyprian Mamboleo Hiza vs. Eva Kioso and Mrs. Semwaiko**, Civil Application No. 3 of 2010 Court of Appeal of Tanzania at Tanga, cited with approval the Court of Appeal of Eastern Africa in the celebrated case of **Ngoni Matengo Cooperative Marketing Union Ltd vs. AM Mohamed Osman (1959) EA 577 at page 580** where the Court distinguished the meaning of "striking out" and "dismissing" an appeal, thus:

"This Court, accordingly, had no jurisdiction to entertain it, what was before the Court being abortive, and not properly constituted appeal at all. What is this Court ought strictly to have done in each case was to "strike out" the appeal as being incompetent, rather than to have "dismissed" it for the later phrase implies that a competent appeal has been proper appeal capable of being disposed off."

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Connecting to the authority above, for the matter to be struck out, it must have not reached the finality of the case or application which means it should have not reached the stage of being heard on merit. Unfortunately, this Application went all the way to the determination of it because both parties were heard on merit. Furthermore, the applicant's counsel in her submission agreed that, the Applicant lacks point of law capable of being warranted the leave to appeal to the Court of Appeal of Tanzania. She did not indicate in her submission whether there is intention to refile the matter once it is struck out, she simply prayed the matter to be struck out without cost.

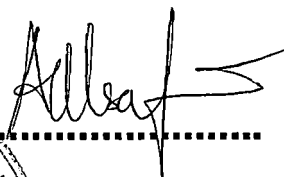
In my opinion if the Application is heard on merit and there is no point raised as to whether there is a defect in the affidavit subject to amendment, or issues of wrong citation or improper Application, it is not proper for the Court to strike out the matter but rather dismiss it. Since the issues of point of law, and issues to be addressed by the Court of Appeal is a standard required and it goes to the merit of the Application, I believe it will be a serious misdirection on the part of this court to strike out the matter while knowing that it has no merit.

Since there is no points of law raised in this matter and no triable issues worthy of calling the attention of the Court of Appeal which are addressed in the applicant's affidavit and her submission and the matter has been heard on merit, the leave to appeal to the Court of Appeal is not granted for lack of merit so is the prayer to struck out the Application. I hereby dismiss the Application with no order as to costs.

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It is so ordered.

Dated at Dar es Salaam this 16th day of November 2021.



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A. MSAFIRI
JUDGE

