

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

MISC. LAND APPLICATION NO. 10 OF 2021
(Originating from Land Appeal No. 18 of 2020, by Hon. Msafiri, J.)

SUBIRA SAID MGANGA.....APPLICANT

VERSUS

JOLY FINANCE LIMITED.....1ST RESPONDENT
ZAYUMBA YUSUFU MGANGA.....2ND RESPONDENT

R U L I N G

Date of Last Order: 10.08.2022
Date of Ruling: 29.08.2022

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 Msafiri, J. vide Land Appeal No. 18 of 2020, dated 10th December, 2021. The application was made under Section 47(2) of the Land Disputes Courts Act, Cap 216 R. E. 2019 accompanied by the affidavit of the applicant, Subira Said Mganga. The same was heard by way of written submissions, Loveness Denis, learned counsel appeared for the applicant while Advocate Gabriel Aloyce Mushi appeared for the 1st respondent. The 2nd respondent did not file his submissions.

In his submissions, Advocate Denis referred the court to paragraph 14 of the affidavit in support of the application and maintained that, there are

issues of law that need the attention of the Court of Appeal. These include the absence of applicant's consent or assent to the mortgage in question and the issue of time limitation. She referred the court to the case of **Change Tanzania Limited vs. Registrar, Business Registration & Licensing, Misc. Commercial Application No. 97 of 2022.**

In reply, the 1st respondent's counsel insisted that there is no arguable appeal that is worth of determination by the Court of Appeal of Tanzania. That, the grounds of appeal given by the applicant in her affidavit are baseless. That, the matters complained of by applicant have all been determined by the High Court. Hence the application is nothing other than an abuse of court process as stated in **Jereys Nestory Mutalemwa vs. Ngorongoro Conservation Area Authority, Civil Appeal No. 154 of 20216, Court of Appeal of Tanzania(unreported).**

In here rejoinder, the applicant's counsel maintained that, at this stage, what the court does is not a determination of an appeal in question, rather an enquiry on the application whether the matters stated therein justify the grant of leave. That, they raise issues of general importance or novel point of law or show prima facie, or arguable appeal. This rule was stated in the case of **Simon Kabaka Daniel vs. Mwita Marwa Nyanganyi and 11 Others (1989) TLR.**

I have considered the arguments of the applicant as well as the affidavit in support of the application. The question for determination is whether the application has merit or not.

As argued by the counsel for the applicant, at this point, what this court is invited to do is to satisfy itself if the matter contains an arguable appeal,

see the cases of **Change Tanzania Limited**, (supra) and **Simon Kabaka Daniel** (supra).

At hand, I have the affidavit in support of the application. On paragraph 14 of the affidavit, the applicant has clearly stated the reasons for seeking the leave and she complains among others the issue of time limitation in relation to the appeal filed in court. These issues constitute an arguable appeal worth the attention of the Court of Appeal of Tanzania. That being the case, I find no reason to reject this application as the applicant's right of appeal need to be respected.

In the end, the leave is hereby granted. No order as to costs.

It is so ordered.




T. N. MWENEGOHA
JUDGE
29/08/2022