

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

**MISC. LAND APPLICATION NO. 177 OF 2022**

(Arising from Land Appeal No. 17 of 2021)

**RAMADHANI NASSORO MAYUGUMBI** (As Administrator of  
the Estate of OMARY NASSORO MUYUGUMBI).....**APPELLANT**

**VERSUS**

**NIKO SAMWELI ASAPH**.....**RESPONDENT**

Date of Last Order: 02.08.2022  
Date of Ruling: 05.09.2022

**RULING**

**V.L. MAKANI, J.**

The applicant herein is seeking for leave to appeal to the Court of Appeal in respect of the judgment of this court in Land Case No. 17 of 2021 (Hon. T.N. Mwenegoha, J).

The application is made under section 47(2) of the Land Disputes Court Act CAP 216 RE 2019 and is supported by the affidavit of the Ubadi G. Hamidu, Advocate representing the applicant. The respondent has opposed the application and has filed a counter affidavit sworn by Nehemia Gabo, Advocate.

Hearing of the application proceeded orally. Mr. Hamidu prayed the court to adopt the contents of his affidavit as part of his submissions. He added that an appeal is a fundamental right under the Constitution of Tanzania in Article 13(6)(a) and in that respect the applicant is supposed to have that relief. He went on saying that leave is a discretion of the court which must be exercised judiciously. He relied on the case of **Balinangwe Mwambungu vs. Mohamed Hamisi, Civil Application No. 481/17 of 2000 (CAT-DSM)** (unreported) which quoted the case of **Regional Manager TANROADS Lindi vs. D.P. Shapriya & Company Limited, Civil Application No. 29 of 2012**. He said with the cited cases it is clear that the reasons for grant of leave as said in the affidavit are plausible. He thus prayed for the application to be granted.

In reply, Mr. Gabo for the respondent adopted the contents of his counter-affidavit. He said he agrees that an appeal is a fundamental right but there has to be sufficient reasons for the court to assess so it can decide whether or not leave to the Court of Appeal should be granted. He said he is objecting to the application because the core reason by the applicant is to confirm that the application at the Tribunal was time barred. He said this reason is not sufficient because

this issue is a matter of law and according to section 9(2) of the Law of Limitation Act CAP 89 RE 2019 time for recovery of land is 12 years. He pointed out that since there is a limitation nothing will change as limitation has been set by the law. He said leave will just prolong the matter and restrain the respondent from enjoying the fruit of the decree. He prayed for the application to be dismissed.

In rejoinder Mr. Hamidu observed that what his learned colleague said is the dispute which requires the intervention of the Court of Appeal and it is necessary so that the rights of the applicant are also protected. He reiterated the main submissions and the prayer for leave to be granted for the applicant to appeal to the Court of Appeal.

I have listened to the learned Advocates for the parties, and I have gone through the affidavit and the counter-affidavit respectively. The main issue for consideration is whether this application has merit.

The guiding principles for grant of leave to appeal to the Court of Appeal are found in the case of **Harban Haji Mosi & Another vs. Omar Hilal Seif & Another, Civil Reference No. 19 of 1997 (CAT)** (unreported), in where it was held:

*"Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily the proceedings as a whole reveals such disturbing feature as to require the guidance of the Court of Appeal. The purpose of the provision is therefore to spare the court the spectre of un-meriting matters and to enable it to give adequate attention to cases of true public importance"*

Similarly, in **British Broadcasting Cooperation vs. Erick Sikujua Ng'maryo Civil Application No.138 of 2004 (CAT-DSM)**

(unreported) it was held:

*"Needless to say, leave to appeal is not automatic. It is within the discretion of the Court to grant or refuse leave. The discretion must, however, be judiciously exercised on the materials before the court. As a matter of general principle, leave to appeal will be granted where the grounds of appeal raise issues of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal (see: **Buckle v Holmes** (1926) ALL E.R. Rep. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted".*

Further, in the case of **Balinangwe Mwambungu** (supra) the Court of Appeal had this to say:

*"... there is no doubt that grant of leave is not automatic, but conditional, in that it can only be granted where the grounds of the intended appeal raise arguable issues in the appeal before the Court."*

From the authorities above, it is apparent that when granting leave to appeal, the court before which an application for leave to appeal

has been filed has the discretion to grant the leave or refuse it. However, that discretion must be judiciously exercised and the court in so doing must consider the facts before it. In order for the court to exercise its discretionary powers the applicant must prove to the court that:

- 1. That the intended appeal raises issues of general importance or novel point of law*
- 2. That the grounds show a prima facie or arguable Appeal*
- 3. That the grounds are not frivolous, vexatious, useless, or hypothetical*
- 4. That the appeal stands a reasonable chances of success*
- 5. That the proceedings reveal the disturbing features which require the guidance of the Court of Appeal.*

These facts must be shown by the applicant both in his affidavit and the submissions in support of the application. Further, the weaknesses moving him to appeal must be clearly seen in the proceedings and the decision subject of the appeal.

Now, the issue is whether the applicant herein has managed to fulfil the conditions elaborated in the above cited authorities. Looking at the affidavit in support of the application, the issues which require intervention of the Court of Appeal are enumerated in paragraphs 8(1) to (iv) of the affidavit. I have noted that these issues were also

grounds of appeal, therefore, they were well addressed by this court in Land Appeal No. 17 of 2021. Mr. Hamidu pointed out that an appeal is a right of an aggrieved party under the Constitution. Admittedly, that is the position, but such right has to be secured by following the proper procedure. And the circumstances warrant that where leave is sought the condition is that sufficient reasons have to be given. In this present instance no sufficient reasons were given so the argument by Mr. Hamidu that leave is automatic is misdirected.

For the reasons above, I find nothing controversial in the judgment of Land Appeal No.17 of 2021 to warrant the intervention of the Court of Appeal. The application is thus dismissed for want of merit. Considering that this application is a matter of the law, the applicant shall not be condemned to pay costs. Consequently, each party shall bear his own costs.

It is so ordered.



  
**V.L. MAKANI**  
**JUDGE**  
**05/09/2022**