

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT PAR ES SALAAM

MISC. LAND APPLICATION NO. 485 OF 2022

*(Arising from the Judgment and decree of the High Court of Tanzania
(Land Division), at Dar es Salaam delivered on the 26th July, 2022 by Hon.
Mgeyekwa, J. in Land Appeal No. 246 of 2021 which originated from the Land
Application No. 146 of 2020 at the District Land and Housing Tribunal for Ilala
delivered on 4th day of October, 2021 Before Hon. Kirumbi, Chairman)*

ABDULLAH AMARI BAAJUN (Suing as Administrator
of the Estates of the late SAID OMAR) **APPLICANT**

VERSUS

ASHA SHABANI KINANDE (Suing as Administratrix
of the Estates of the late ASHA MWARABU) **RESPONDENT**

RULING

Date of Ruling 26/09/2022

Date of the last order 30/09/2022

A.Z.MGEYEKWA, J

This Court is called upon to leave to appeal to the Court of Appeal of Tanzania. The Judgment was in respect of Land Appeal No. 246 of 2021 which was dismissed with costs, thereby upholding the decision of the District Land and Housing Tribunal that was found in the respondents' favour. The application is preferred under the provisions of section 47 (2)

of the Land Disputes Courts Act Cap. 216 [R.E 2019] Section 5(1),(c) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019 and Rule 45(a) of the Tanzania Court of Appeal rules, 2019, and any other enabling provisions of laws. The application is supported by the applicant's own affidavit deponed by Abdullah Amari Baajun (the Applicant). The application was opposed by the respondent who filed a counter-affidavit sworn by Asha Shaban Kinande, the respondent.

When the matter was called for hearing on 26th September, 2022, the applicant had the legal service of Mr. Kasaizi Andrew Kasaizi and Ms. Loveness Ngowe learned counsels, and the respondent enlisted the legal service of Mr. Adinan Chitale, learned counsel.

The applicant through his advocate urged for this court to adopt the affidavit and form part of his submission. In a summary, the learned counsel submitted that the applicant was aggrieved by this court decision, hence, he lodged a Notice of Appeal and has raised several grounds which attracts the attention of the Court of Appeal of Tanzania.

The applicant's counsel submitted to the effect that the appeal before this court was tainted with illegality and irregularities. He stated that the applicant's grounds are contained in paragraph 6 (1) to (xxi) of the affidavit. Some of the grounds which are considered to be worth of

consideration by the Court of Appeal are summarized and crystalized hereunder:-

- i. That 1st Appellate Court erred in law and in fact by concluding that the Doctrine of Adverse Possession was not new issue composed during composing of the judgment of the Trial Tribunal.*
- ii. That the Court of Appeal to determine whether the Tribunal had jurisdiction to apply the doctrine of Doctrine Adverse Possession automatically to the registered land whereas the said jurisdiction is vested exclusively to the High Court upon special application.*
- iii. That the Trial Tribunal erred in law and in fact fir failure to interpret property the provisions of the law of limitation which deals with the law of limitation especially on the deceased's estate and the cause of action against the estate of the deceased.*
- iv. That the Court of Appeal to determine whether the Trial Tribunal and the 1st Appellate Court had jurisdiction to deprive the decease's estate and legalize that the disputed property belongs to the respondent despite all the evidence showing that the disputed land belongs to the late Said Omar without any proof of transfer of the said property.*

- v. *That the two Courts below failed in law and in fact to evaluate the evidence hence reaching at a bad decision which makes a bad precedence.*
- vi. *The Court of Appeal to determine whether the assessors had jurisdiction to give opinion of the issues framed in their absence.*
- vii. *The Court of Appeal to determine that the parties are bound with their pleadings and the Court had no jurisdiction to step into shoes of the parties as the law requires who allege must prove the existence of facts.*
- viii. *That the proceedings in the appeal were illegally conducted as the file was first assigned to Hon. A.Z. Mgeyekwa, J without assigning reasons in the proceedings or judgment for taking over the proceedings.*

The applicant's counsel contended that grant of an application for leave to the Court of Appeal depends on the applicant's ability to demonstrate that there is a point worth of consideration by the Court of Appeal of Tanzania. Such point, he argued, must either be a pure legal point or a legal points.

On the strength of the above submission, he beckoned upon this court to allow the applicant's application to go to the Court of Appeal to challenge the decision of this court based on the intended grounds of appeal.

Submitting in rebuttal, the respondent's counsel asserted that the decision of this Court in Land Appeal No. 246 of 2021 was not tainted with any illegality. Mr. Chitale contended that the applicant has failed to establish arguable grounds of appeal instead he has reproduced and multiplied the grounds of appeal from 12 grounds which was raised before this Court to 21 grounds. Ending, the learned counsel for the respondent contended that this is not a case in respect of which leave may be granted.

In his rejoinder, counsel for the applicant reiterate his main submissions and rejoined further that grounds of appeal cannot be discussed in this application.

Having heard the rival submissions of the learned counsel for the applicant and respondent, it now behooves the Court to determine whether the applicant and his counsel have raised sufficient grounds or a disturbing feature capable of engaging the Court of Appeal of Tanzania to intervene.

It is the legal position ascertainment whether the legal threshold for granting an application for leave has been met, which entails carrying out a thorough evaluation of the averments made in the supporting affidavit. Leave to appeal to the court of Appeal must be on the satisfaction that the intended appeal raises issues of general importance or a novel point of

law or where there is prima facie, or arguable appeal as it was held in the case of **Sango Bay v Dresdner Bank A.G** [1971] EA 17, it was held that:

"Leave to appeal will be granted where prima facie it appears that there are grounds which merit serious judicial attention and determination by a superior Court."

Guided by the above authority it is plain and certain that leave to appeal to the Court is grantable on such conditions were, with lucidity, expounded by the Court in the case of **British Broadcasting Corporation v Eric Sikujua Ng'amaryo**, Civil Application No. 138 of 2004 (both unreported). In the case of **Rutagatina C. L. v The Advocates Committee and Another**, Civil Application No. 98 of 2010 the Court 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 a novel point of law or where the grounds show a prima facie or arguable appeal (see: **Buckie v Holmes** (1926) ALL £ R. 90 at page 91). However, where the ground'') of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted."*

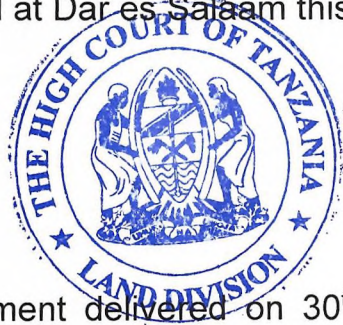
In regard to the above holding, the Court of Appeal emphasized that the disturbing features must be in the form of serious points of law that warrant the attention of the Court of Appeal.

In the instant application, the central issue for my determination is whether the grounds raised by the applicants are embraced in the conditions set out in the above decisions of the Court for the grant of leave to appeal.

Reading the above authority, I have noted that in paragraph 6 (i) to (xxi) of the applicant's affidavit. In my view, once an appeal is eventually lodged, the Court of Appeal of Tanzania will determine issues such as, whether there are any irregularities and illegality in the conduct of the court proceedings and issues related to the Doctrine of Adverse Possession. I do not think this and other grounds raised in the applicant's affidavit are not serious enough to be determined by the Court of Appeal. I will, in the circumstances, exercise my discretion under section 5(1) (c) of Cap. 141 and grant leave to appeal to the Court of Appeal. No order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 30th September, 2022.




A.Z.MGEYEKWA

JUDGE

30.09.2022

Judgment delivered on 30th September, 2022 in the presence of Ms.

Loveness Ngowi, counsel for the applicant.




A.Z.MGEYEKWA

JUDGE

30.09.2022