

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO.549 OF 2022**

(Arising from the Judgment and Decree of the High Court – Land Division,  
in Land Appeal No. 61 of 2013 before Hon. Arufani, J.)

**HASSAN ALLY MFAUME ..... APPLICANT**

**VERSUS**

**SALEHE HAMADI ..... 1<sup>ST</sup> RESPONDENT**

**MOHAMED HAMADI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of Order: 26.10.2022*

*Date of the Ruling: 26.10.2022*

**A.Z. MGEYEKWA, J**

In this application, the Court is called upon to grant leave to appeal to the Court of Appeal of Tanzania. The application is brought under section 47 (2) of the Land Disputes Courts Act, Cap. 216 and Rule 45 (a) of the Tanzania Court of Appeal Rules, 2009. The application is supported by an affidavit deponed by Hassan Ally Mfaume, the applicant. The applicant has set out the grounds on which an extension of time is sought. The

respondent has stoutly opposed the application by filing a joint counter-affidavit deponed by Salehe Hamadi and Mohamed Hamadi, the respondent.

When the matter was called for hearing before this court on 26<sup>th</sup> October, 2022, the applicant had the legal service of Mr. Isaac Mutashobya, learned and the respondents enjoyed the legal service of Mr. Cleoplace James.

Mr. Isaac, learned counsel for the applicant was the first one to kick the ball rolling. The learned counsel for the applicant submitted that 12<sup>th</sup> September, 2022 the applicant filed the instant application and the application under section 47 (2) of the Land Disputes Courts Act and Rule 45 (a) of the Court of Appeals of Tanzania Rules. The learned counsel urged this Court to adopt the applicant's affidavit and form part of his submission.

Mr. Isaac asserted that the applicant wants to challenge the decision of this Court, hence, he has raised grounds that draws the attention of the Court of Appeal of Tanzania specifically under paragraph 5 of the affidavit. Supporting his submission he cited the cases of **Duhile v Germayo Sammy**, Misc. Land Application No. 23 of 2021 and **Geriyes Mtalemwa V Ngorongoro Conservation Area Authority**, TLR (2016) 157, the Court determined whether there is an arguable issue to move this Court to grant

the application without touching on the merit of the appeal. The counsel for the applicant went on to submit that in there were matters which were not determined by the District Land and Housing Tribunal the applicant identified and raised those grounds but this Court did consider them. He added that the in evaluating the evidence on record, this Court disregarded the key issues of ownership as raised by the applicant during the appeal. Mr. Isaac stressed that there are issues of law that needs to be determined by the Court of Appeal.

In conclusion, the applicants urged this Court to grant the applicant's application with costs upon the respondent.

With respect to the proposed arguable grounds, the general contention by Mr. Cleoplace is that the same are lacking weight. The contention by the respondent's counsels is that there are no contentious legal issues to be tabled to the Court of Appeal and there are no *prima facie* issues in the impugned Judgment. The counsel urged this Court to adopt his counter affidavit to form part of our submission. The counsel contended that in the whole paragraphs of the applicant's affidavit there is no information on whether the applicant has filed a Notice of Appeal and has failed to prove if there are contentious issues.

The learned counsel for the respondents asserted that the applicant is supposed to state clearly the alleged illegalities to be determined by the

Court of Appeal. Stressing, he asserted that there are no contentious issues stated in the applicant's affidavit instead the applicant is alleging that there are issues of illegalities. Once an applicant raises such illegalities the same must be apparent on the face of the record. he insisted that the applicant has failed to point out evidence which was not evaluated by this Court. He added that at this stage, the duty of this Court this to examine whether there are *prima facie* issues and whether *prima facie* issues are demonstrated in the affidavit. He insisted that there is no any *prima facie* case demonstrated by the applicant.

On the strength of the above submission, the counsel beckoned upon this Court to dismiss the application with costs.

In his brief rejoinder, Mr. Isaac reiterated his submission in chief. He argued that the applicant in paragraph 6 of his affidavit, stated that he has lodged a Notice of Appeal before this Court on 2<sup>nd</sup> September, 2022. He added that the applicant had attached all material documents. It was his view that demonstrating arguable issues on the affidavit is not correct because this Court is preempted to determine the merits of the intended. Ending, he urged this Court to grant our application.

Having heard the rival submissions of the learned counsel for the applicant and respondents, 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."*

Regarding 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 5 of the applicant's affidavit, he simply stated that the impugned decision is tainted with illegalities and irregularities without stating the arguable grounds which attract the attention of the Court of Appeal. As rightly submitted by Mr. Cleoplace, the applicant has failed to show the grounds of appeal which raise issues of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal. I am convinced that the grounds for determination have been raised through a submission from the bar.


The alleged points of law are not specifically pleaded in the applicant's supporting affidavit, and what Mr. Mangalaba did, through his submission, was to introduce a point of law which were not pleaded in the affidavit. He

completely banked on the alleged points of law which were not stated by the applicant in his affidavit. Therefore, I fully subscribe to Mr. Clephace's submission that the applicant has failed to show arguable grounds which attract the attention of the Court of Appeal.

For the aforesaid, findings and reasons, I proceed to dismiss the applicant's application for lack of merit without costs.

Order accordingly.

Dated at Dar es Salaam this date 26<sup>th</sup> October, 2022.

A.Z.MGEYEKWA  
JUDGE  
26.10.2022

Judgment delivered on 26<sup>th</sup> October, 2022 through video conferencing whereas Mr. Isaac Mutashobya, counsel for the applicant, and Mr. Cleophace James, counsel for the respondents were remotely present.

A.Z.MGEYEKWA  
JUDGE  
26.10.2022