

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

**MISC. LAND CASE APPLICATION NO. 414 OF 2022**

*(Originating from Land Appeal No. 56 of 2022, by Hon. Msafiri, J.)*

**PUSH MOBILE MEDIA LIMITED.....APPLICANT**

**VERSUS**

**AMOS MISANA MBAGALA.....RESPONDENT**

**R U L I N G**

*Date of Last Order: 30.09.2022*

*Date of Ruling: 27.10.2022*

**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. 56 of 2022, dated 28<sup>th</sup> June, 2022. The application was made under Section 47(1) and (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, Rule 45(a) of the Court of Appeal Rules, G.N 368 of 2009(amendment rules of 2017) and section 95 of the Civil Procedure Code, Cap 33 R. E. 2019. It was also accompanied by the affidavit of Jerry Pasion Msamanga, counsel for the applicant.

The same was heard by way of written submissions, Jerry Pasion Msamanga, learned counsel appeared for the applicant while Advocate Evance Ignace John appeared for the respondent.

In his submissions, Mr. Msamanga relied on the case of **Jireys Nestory Mutalemwa versus Ngorongoro Conservation Area Authority, Civil Application no. 154 of 2016, Court of Appeal of Tanzania at Arusha(unreported)**. It was insisted in the said case that, the paramount consideration in granting a leave to appeal is to look on the grounds of the intended appeal and see if the same do raise issues of general importance or novel point of law or show a prima facie or an arguable appeal.

The applicant's counsel mentioned the grounds of the intended appeal which include among others the failure of this court to re-evaluate the evidence on record consequently making a decision against the applicant. Also, the applicant faulted the court for shifting the burden of proof and the errors made by the court in determining the reliefs claimed. In the end he prayed for the court to allow the application.

In reply, Mr. John was of the view that, nothing has been demonstrated by the applicant in this application to warrant the interference of the Court of Appeal of Tanzania. That, there is no issue or irregularity that has been pointed out by the applicant that need the intervention of the Court of Appeal, hence the whole application is devoid of merits and should be dismissed.

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

In applications of this nature, there is no law that has an express provision giving the factors to be considered when allowing or rejecting it. The powers are exclusively vested in the Court itself whether to allow or reject an Application of this nature. What the rules insist is the lucid exercise of

such powers by the Court. As the same are judicial powers, they have to be exercised judiciously by focusing on the grounds of appeal raised by the applicant, see **Jireys Nestory Mutalemwa versus Ngorongoro Conservation Area Authority supra and Rutagatina C.L versus The Advocates Committee and Another, Civil Application No. 98 of 2010, Court of Appeal of Tanzania (unreported)**.

In the instant application, the appellant mentioned about three grounds of his intended appeal as follows; -

- 1. He faulted the High court for shifting the burden of proof.**
- 2. That, the High court failed to re-evaluate the evidence on record.**
- 3. Improper determination of the relief claimed.**

In my view, these grounds create an arguable appeal. Considering the fact that, a right of appeal is falls within the basic right to be heard, I find no need to curtail the applicant another forum to present his course. To be precise, I see merit in the application at hand and allow it accordingly. Each party to bear his own costs.

It is so ordered.



  
**T. N. MWENEGOHA**

**JUDGE**

**27/10/2022**