

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

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 89 OF 2022

FREDRICK EDWARD MWACHA SINDANO.....APPLICANT

VERSUS

TABIA SHABANI MWALENI.....1st RESPONDENT

ANTONY HUKUMU MWALENI.....2nd RESPONDENT

RULING

24/08/2022 & 19/10/2022

Masoud, J.

This ruling is in respect of an application for leave to appeal to the Court of Appeal of Tanzania against the whole of the decision of this court in Land Appeal No. 206 of 2021 dated 22/02/2022. It was brought *inter alia* under section 47 (1) of the Land Disputes Courts Act [cap. 216 R.E 2002].

The application is supported by the affidavit of the applicant's counsel, one Glory Venance. The affidavit has it that the applicant intends to appeal to the Court of Appeal against the above mentioned decision of this court which dismissed the appeal on the ground that it was lodged by the applicant out of time as the hard copy of the memorandum of appeal was

presented to the court on 24/09/2022, whilst the decision of the District Land and Housing Tribunal sought to be challenged was delivered on 28/07/2021.

The affidavit supporting the application also pointed out that on the instruction to institute the appeal as afore said, the appellant lodged notice of appeal, drafted memorandum of appeal for the intended appeal, filed the present application for leave to appeal to the Court of Appeal against the said decision of this court as per the requirement of the law, and applied to be supplied with a copy of the ruling dismissing the Land Appeal No. 206 of 2021. Copies of the notice of appeal and memorandum of appeal were annexed to the application to fortify the averments in the affidavit.

The respondent opposed the application and for that purpose, he filed a counter affidavit conspicuously disputing the application. The counter affidavit has it that the applicant took almost a month to present the application before the court after making electronic filing. It was thus averred that there was no good cause shown to warrant granting of the sought leave.

From the rival submissions, it was not in dispute that the applicant has taken steps in compliance with the law to enable him to appeal against the ruling of this court if the leave of this court is granted. The counsel for the applicant referred this court to section 47(2) of cap. 218 R.E 2019 and the grounds of appeal set out in the intended memorandum of appeal. According to the counsel for the applicant, the grounds of appeal present an arguable case warranting granting of the leave.

In so far as the intended grounds of appeal are concerned, the court was told by Ms. Glory Venance, Advocate for the applicant that it was wrong for the court to hold that the appeal was filed out of time without considering the fact that the appeal was electronically filed in time on 26/08/2021 at 16:35:48 hours through court digital filing platform; that the court failed to scrutinize the court printout copy showing that the appeal was electronically filed on 26/08/2021 at 16:35 which was within the time; and that the court abdicated her judicial duty of comparing the electronic filing footage printed from the court registry and the one generated by the appellant which omission occasioned injustice for failure to determine the filing date and time.

In relation to the above grounds of the intended appeal, the court was told that there were conflicting decisions as to the electronic filing date and the date for presentation of hardcopy before the court. If leave is granted, the court was told, the Court of Appeal would have the opportunity to address and resolve the conflict.

On the part of the respondent, the insistence by the respondent's counsel, Mr. Samuel Shadrack, was that the application was not meritorious as there were no triable issues shown. Apart from merely saying that there were no triable issues, regard was not had by the counsel for the respondent on the grounds of the intended appeal as expounded by the applicant's counsel. Indeed, the counsel for the applicant took her time to relate her submission on existence of an arguable case with the intended grounds of appeal which are part and parcel of the applicant's affidavit supporting the application as already shown.

A great deal of the respondent's counsel's submission was to the effect that there was delays in filing the appeal which delay was a result of negligence on the part of the applicant. In so far as the applicant's counsel is concerned such submission was not relevant at this stage of leave of which I agree.

The question is whether this is a fit case to grant the leave. I am in my determination guided by the case of **Harban Haji Mosi and Another vs Omar Hilal Seif and Another**, Civil Reference No. 19 of 1997 (unreported); and **Shaban Hamimu and Others vs Said Abeid John and Another** Misc Civil Application No. 4 of 2015 (unreported) which restated the position of the law that leave is grantable where the proposed appeal stands reasonable chances or where the proceedings reveal such disturbing features as to require the guidance of the Court of Appeal.

I was particularly guided by the principle in **British Broadcasting Corporation vs Eric Sikujua Ng'aro**, Civil Application No. 138 of 2004 where the Court of Appeal, among other things, insisted that leave to appeal is not automatic, but it is within the discretion of the court based on materials before the court, and that leave to appeal will be granted where grounds of appeal raise issues of general importance or novel point of law or where the grounds show prima facie or arguable appeal.

In view of the grounds of the intended appeal, I am of the finding that they raise issues of general importance on novel matters that relate to electronic filing. They equally, in my considered opinion, show arguable appeal which is worthwhile for determination of the Court of Appeal. I am

thus persuaded that this is a fit case for granting leave. I am in this respect mindful that none of the grounds was shown by the respondents' counsel not to raise an arguable case.

In the result and for the foregoing reasons, I would grant the application as I hereby do so. Costs in the cause. It is so ordered.

Dated at Dar es Salaam this 19th October 2021.


B. S. Masoud
Judge

