

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 400 OF 2022

(Arising from the Judgment and decree of the High Court of Tanzania (Land Division) at Dar es Salaam in Land Appeal No. 94 of 2021 dated 2nd March 2022 Hon. Masoud, J.)

SAID SELEMANI MGOTO.....APPLICANT

VERSUS

RAMADHANI SHABANI NKUPE.....1ST RESPONDENT

MAULIDI MPANDE.....2ND RESPONDENT

Date of last order: 30/11/2022

Date of ruling: 07/12/2022

RULING

A. MSAFIRI, J.

On 19th July 2022, the above named applicant lodged the present application, by chamber summons under Section 47 (2) of the Land Disputes Courts Act [CAP 216 R.E 2002], (the Act) Section 5(1) (c) of the Appellate Jurisdiction Act, [CAP 141 R.E 2019] (the AJA) and Rules 45 (a) of the Tanzania Court of Appeal Rules, 2009, seeking for the following reliefs namely;

- i. That the Honourable Court be pleased to grant leave to the applicant to file an appeal in the Court of Appeal of Tanzania against the decision of the Honourable Court*

Alle.

through Hon. Masoud, J. which was delivered on 2nd March 2022 in Misc. Land Appeal No. 94 of 2021.

- ii. That the costs of this application follow the event.*
- iii. That the court may be pleased to grant any other relief as may seem just in the circumstances.*

The application has been taken at the instance of the applicant and is supported by an affidavit affirmed by the applicant himself.

When this application was called on for hearing on 30/11/2022, both parties appeared in person. They had no legal representation. The application was disposed of orally.

The applicant having adopted the affidavit in support of the application, he submitted briefly that the court erred in holding that he has settled the dispute with the 2nd respondent while that was not true and the latter is still in occupation of the land in dispute.

On reply, the 1st respondent contended that he has been living with the applicant as neighbours since 2006 up to 2015 when he (the 1st respondent) was ordered to demolish his house. The 1st respondent *Atlls*.

submitted further that the dispute is between the applicant and the 2nd respondent. Hence, he is contesting the application.

On the other hand, the 2nd respondent having adopted the counter affidavit contended that the decision of this Court in Land Appeal No. 94 of 2021 was right therefore there is no reason for the applicant to file an appeal. He submitted that the reasons advanced by the applicant are not sufficient hence he prayed the same to be dismissed.

On rejoinder the applicant essentially reiterated his submission in chief. He added further that he has a right to appeal.

Having gone through the parties' submissions rival and in support of the application the sole issue that calls for the court's determination is whether the application has merits.

As provided for under Section 47 (2) of the Act, where a party is aggrieved with the decision of this Court exercising its appellate jurisdiction, he has to seek leave of this Court before appealing to the Court of Appeal. In the instant matter the judgment sought to be appealed against arises from Land Appeal No. 94 of 2021 hence leave of this Court is mandatory. *Alle*

For application for leave like the present one, the applicant must demonstrate that there are contentious issues of law worthy of consideration by the Court of Appeal. The import of Section 47(2) of the Act aims at ensuring that only deserving appeals are lodged at the Court of Appeal. In the decision of the Court of Appeal in **British Broadcasting Corporation v Erick Sikujua Ng'maryo** Civil Application No. 138 of 2004 (unreported) the Court stated that;

*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 and 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. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical no leave will be granted. *Alle.**

Going by the above referred decision, it is worth noting that granting of leave is not automatic. The applicant must demonstrate that there are contentious issues to be addressed in the appeal before the Court.

In the instant application on paragraph 5 of the applicant's affidavit in support of the application there are several issues ranging from res judicata to non-consideration of evidence that the 1st respondent unlawfully built his house on the portion of the applicant's land.

My duty in this application is not to determine the merits or demerits of the points raised by the applicant as that will amount to determination of the appeal.

From the grounds raised in paragraph 5 of the applicant's affidavit, I find that the application has disclosed points of law worthy of consideration by the Court of Appeal. Consequently, leave is hereby granted to the applicant to appeal to the Court of Appeal as prayed. Costs shall follow the events. It is so ordered.



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A. MSAFIRI,

JUDGE

07/12/2022