

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO 496 OF 2022**

**YUDA WENSTESLAUS NDANU .....APPLICANT**

**VERSUS**

**FRANK P. KIBONARWEBANGIRA .....RESPONDENT**

**RULING**

*Date of Last Order: 11/10/2022*

*Date of Judgment: 21/10/2022*

**T.N. MWENEGOHA.J.**

This is an application for leave to appeal to the Court of Appeal against the decision of High Court of Morogoro in Land Application No. 140 of 2021 in which the High Court dismissed the application.

The application is supported by the affidavit of the applicant. Upon being served with the applicant's application the respondent filed a counter affidavit contesting it.

The application was heard by way of written submission, only the applicant filed his submission.

In his submission the applicant argued that it is the legal requirement that once a party is aggrieved by the decision of the High court, he has Constitutional right to appeal to the Court of Appeal of Tanzania however such right is not automatic he must first seek leave in order to appeal to the Court of Appeal.

He further stated that leave being the legal requirement is only granted if the applicant demonstrates that, the matter raises issues of law and is fit case for further consideration by the Court of Appeal. He referred this Court to the case of **Nurbhai N.Rattansi V Ministry of Water Construction Energy And Environment And Husein Rajabali Hirji** 2005 TLR 220 Page 220 Court of Appeal had this to say:

*"the matter raises contentious issues of law and is a fit case for further consideration by the court of appeal. "*

He stated that there are issues of laws which require consideration of the Court of Appeal of Tanzania. That, those issues can be found in paragraph 3,4,5,6,7,8, and 9 of the affidavit.

He further stated that in civil case, the burden of proof lies on who alleges as held in the case of **Nurdin Bandali vs Lanibak (Tanganyika) Ltd** (1963) E.A. 304. The same position is found under section 110 Tanzania evidence Act Cap 6 R E 2019.

He stated that the case in the at hand respondent claimed ownership of the land without document to prove his ownership, contrary to what the laws stipulate and require. That the law is very clear that onus of proof lies on the person who alleges a certain fact.

He further contended that parties are bound by their pleading as held in the case of **James Funkwe Gwagilo vs. Attorney General** (1994) TLR 73. That in the case at hand, in their application respondent herein claimed that someone impersonated him but no proof was tendered to prove the same. That, the issue of impersonation is well rooted in respondent application and was left unanswered by the Court.

I have carefully considered the grounds in the applicant's submissions. The issue for determination is whether the applicant has established sufficient reasons to be granted leave to appeal to the Court of Appeal of Tanzania.

It is a trite law that leave to appeal to the Court of Appeal is not automatic. It is granted where the Court is satisfied the purported grounds of appeal raise issues of general importance or where the grounds show there is an arguable issue of law, facts or mixed facts and law which need to be determined by the Court of Appeal. The above stated position was made clear in the case of **British Broadcasting Corporation V. Eric Sikujua**

**Ngimaryo**, Civil Application No. 138 of 2004, CAT at DSM (unreported)

where the Court of Appeal 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 case or arguable appeal."*

Being guided by the above position of the law this Court has considered the proposed grounds of the intended appeal as deponed at paragraph 3,4,5,6,7,8 and 9 of the affidavits supporting the application. I have found these grounds of appeal are points of both facts and law and are fit to be determined by the Court of Appeal of Tanzania.

In the case of **Said Ramadhani Mnyanga vs. Abdallah Salehe 1996**

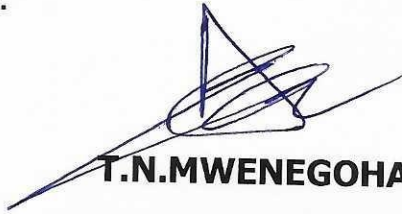
TLR 74 (TZHC) in this case the court stated that;

*"In conclusion, I am of the considered view that the three arguments raise contentious issues of law. Hence this is a fit case for further consideration by the Court of Appeal. The application is therefore granted as prayed."*

The said grounds make the Court to find the applicant has managed to satisfy the court that he has a prima facie or arguable appeal which deserve to be determined by the Court of Appeal of Tanzania. In the

premises the applicant is granted leave to appeal to the Court of Appeal of Tanzania.

No order as to costs.



**T.N.MWENEGOHA**

**JUDGE**

**21/10/2022**

