

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC LAND APPLICATION NO. 703 OF 2022

(Arising from consolidated Land Appeal No. 122 & 127 High Court
(Land Division) Hon. Justice Mkeha, dated 20th May, 2019.

Originating from District Land & Housing Tribunal for Kinondoni, in
Land Application No. 106 of 2012)

HILDA RWESHUNJU.....APPLICANT

VERSUS

GODZA MATWEW BAVU (As administrator of the estate of the late

PROF. IMMANUEL KILIMA BAVU.....RESPONDENT

Date of Last Order: 01/12/2022

Date of Ruling: 01/12/2022

RULING

I. ARUFANI, J.

The applicant filed in this court the application at hand seeking for leave to appeal to the Court of Appeal against the decision of this court delivered in consolidated Land Appeals Nos. 122 and 137 of 2017 of this court. The application is made under section 47(2) of the Land Disputes Courts Act Cap 216 R.E 2019 and is supported by the affidavit of the applicant.

When the application came before me today 01st day of December, 2022 the counsel for the respondent, Mr. Egidi Mkoba told the court the

respondent is not opposing the application as they have no justifiable reason of doing so. After the counsel for the respondent informed the court the respondent is not opposing the application, the applicant prayed the court to grant the application.

That being the position of the matter the court has carefully gone through the chamber summons filed in this court by the applicant and the affidavit of the applicant filed in the court to support the application. The court has found the applicant has managed to demonstrate in her affidavit the reason as to why she is seeking for leave of the court to appeal to the court of Appeal against the stated decision of this court.

The court has found the applicant has clearly demonstrated at paragraph 8 of her affidavit in support of the application the grounds which she intends to be considered and determined by the Court of Appeal which are as follows:-

- i. Whether Hon. Judge was not entitled to consider the point of limitation and the principle of adverse possession.
- ii. Whether Hon. Judge was entitled to pronounce judgment in favour of the respondent basing on mere words without documentary evidence of ownership of Plot No. 223 Block C

Tegeta area Kinondoni Municipality, and ignoring applicants documentary evidence adduced during trial, hence denying her right over the suit premises.

- iii. Whether the Hon. Judge was not entitled to consider the applicants new evidence submitted during appeal which formed part of the dispute.
- iv. Whether Hon. Judge was right to consider the evidence of Land Officer concerning ownership of Plot No. 223 without any point from Land Registry.
- v. Whether or not Hon. Judge was correct in deciding that the applicant did not establish the ownership despite of residing in the suit premises for more than 20 years without interference from the respondent.

After reading the above stated grounds and other facts deposed in the affidavit of the applicant the court has found the applicant has demonstrated there is arguable case worth to be considered by the Court of Appeal. The court has found that, although it is true as stated by the counsel for the respondent that there is no law which states what the applicant is required to do to show she deserve to be granted leave to appeal to the Court of Appeal but the position of the law as stated in number of cases which one

of them is **Lembrica Israel Kivuyo V. M/s DHZ World wide Express & another**, [2007] TLR 162 the applicant is required to show she has arguable case worth to be taken to the Court of Appeal.

In the premises the court has found the applicant has managed to discharge the stated task in the present application. Thus, the application is granted and the applicant is granted leave to appeal to the Court of Appeal against the decision of this court delivered in consolidated Land Appeal Nos. 122 and 137 of 2017 of this court and there is no order as to costs. It is so ordered.

Dated at Dar es Salaam this 01st day of December, 2022



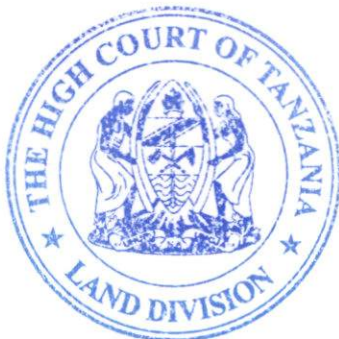
Court:

I. Arufani
I. Arufani

JUDGE

01/12/2022

Ruling delivered today 01st day of December, 2022 in the presence of the applicant in person and Mr. Egidi Mkoba, learned advocate for the respondent. Right of appeal to the Court of Appeal is fully explained.



I. Arufani
I. Arufani

JUDGE

01/12/2022