

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

MISC. LAND CASE APPLICATION NO.339 OF 2022

(Originating from Land Case No.476 of 2020)

LATIFA AMON MAHAVA.....1ST APPLICANT

**PAUL GASPER MREMA (Adminstrator of the Estate of the late
Gaspar Paul)2nd APPLICANT**

VERSUS

**KULWA YAMSEBO (Adminstrator of the Estate of the late
Charles**

Yamsebo).....RESPONDENT

EX-PARTE RULING

Date of Last Order: 05.09.2022

Date of Ruling: 17.10.2022

T. MWENEGOHA, J

The applicant is seeking for a leave to appeal to the Court of Appeal of Tanzania, against the whole Ruling and Drawn Order of this Court, given by Hon. V.L Makani J vide Misc. Land Application No.476 of 2020, dated 29th November, 2021. The Application was made under **section 47(2) of the Land Disputes Courts Act, Cap 216 R.E 2019**. It was also accompanied by the joint affidavit of the applicants.

It was their argument that, by virtue of the law requirements, an appeal to the Court of Appeal is not automatic, it lies with leave of this Court to be granted to the applicants before appealing or lodging records of

appeal to the Court of Appeal. They argued further that they have sufficient grounds of which the applicants intend to ask the Court of Appeal of Tanzania to differ with the decision of this Court include the following;

- a) Whether it was proper for the High Court to deny the applicants their constitutional right to appeal basing on technical issues rather than substance leaving the dispute between the parties unresolved.
- b) Whether it was proper for the High Court to dismiss the application for mistake and negligence occasioned by applicants advocate.
- c) Whether the High Court did properly exercise its discretionary powers in interpreting the laws to different situations in denying the applicants their right to appeal.

The same was heard by way of written submissions, and *ex parte* against the respondent, for his failure to file written submissions. Advocate Manase Wilson Goroba, represented the applicant. In his submissions, he was of the view that, the decision of Makani J., is tainted by illegalities that are in need of the attention of the Court of Appeal of Tanzania. He argued that they have overwhelming chances of success and that the right to appeal is a constitutional right.

The applicants argued that they were aggrieved by this Court's decision and they wish to challenge legality of proceedings of in Misc. Land Application No. 456/2022. They further argued that they are aggrieved due to negligence of an advocate and prayed for the Court to take that into consideration. They referred this Court to the case of **Felix Tumbo**

Kisima vs TTCL (Civil Application No.1 of 1997) [1997] TZCA

where in similar situation the Court granted extension of time due to negligence of the advocate.

Having gone through the submissions of applicant's counsel and the affidavit in support of the Application, the issue for determination is whether the Application has merits or not.

As argued by the applicant's counsel, the applicants have the right to appeal to the Court of Appeal of Tanzania and has also advanced valid reasons as to why such appeal is needed. This Court is noting that the Application was not contested by the respondent hence no doubt has been raised to the sufficiency of the grounds advanced. As the Court is convinced that applicants have sufficient grounds to approach the Court of Appeal, it will not bar them from doing so.

Eventually, the Application is granted. No order as to costs.





T. N. MWENEGOHA

JUDGE

17/10/2022