

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

MISC LAND APPLICATION NO. 677 OF 2021

PIUS H. W. OGUNDE.....APPLICANT

VERSUS

EDWARD ELIA NGALA.....RESPONDENT

Date of last hearing: 12/05/2022

Date of Ruling: 12/05/2022

RULING.

I. ARUFANI, J

The applicant, Pius W. Ogunde filed in this court the present application seeking for leave to appeal to the court of Appeal against the decision made by this court (Hon. P. M. Kente, J) in Land Appeal No. 75 of 2017 dated 20th August, 2018. The application is made under Section 47(2) of the Land Disputes Courts Act Cap 216 R.E 2019 and is supported by an affidavit sworn by Mr. Laurent Ntanga, advocate for the applicant.

The Respondent, filed in the court his counter affidavit to oppose the application. When the application come for hearing today the applicant was represented by Mr. Laurent Ntanga, learned advocate and the respondent was represented by Mr. Gabriel Masinde, learned advocate. The counsel for the respondent told the court they are no longer opposing the application.

He told the court that it is proper for the interest of justice and under the overriding objective the application to be granted so that the applicant's intended appeal can be considered by the court of Appeal and determined on merit.

After being informed by the counsel for the respondents they are no longer opposing the applicant to be granted leave is seeking from the court, the court has gone through the affidavit supporting the application and find the deponent stated in paragraph 7 of the affidavit the reasons which are causing the applicant to intend to appeal to the Court of Appeal. The deponent deposed the applicant want the court of Appeal to determine the following grounds:

- i. "Whether the applicant was time barred to file Land Application No. 169 of 2010 in the Ilala District Land and Housing Tribunal in the year 2010.*
- ii. When does time start to run against the applicant as owner of the land whose ownership was validly confirmed by relevant government authority in 2008 vis a vis by the respondent which occurred in the year 2008.*
- iii. Whether the High Court Judge erred to dismiss Land appeal No. 75 of 2017 basing solely and technically on issue of time which*

*was not raised during the trial in Land Application No. 169/2010
in the Ilala District Land and Housing Tribunal.”*

After considering the above quoted grounds which the applicant intends to be considered by the Court of Appeal in the intended appeal and after seeing the application is not opposed, the court has found there is no justifiable reason to refuse to grant the applicant leave to appeal to the Court of Appeal against the decision of this court mentioned earlier in this ruling by basing on the above quoted grounds.

The court has arrived to the above finding after seeing that the above quoted grounds of appeal have established prima facie case arguable before the Court of Appeal for the purposing of seeing whether the decision of this court which the applicant intends to challenge was right or not. Consequently, 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 Land Appeal No. 75 of 2017 dated 20th August, 2018. Each party to bear his own costs. It is so ordered.

Dated at Dar es Salaam this 12th day of May, 2022.



I. Arufani

JUDGE

12/05/2022

Court:

Ruling delivered today 12nd day of May, 2022 in the presence of Mr. Laurent Mtanga, Advocate for the applicant and in the presence of Mr. Gabriel Masinga, advocate for the respondent.



I. Arufani

I. Arufani

JUDGE

12/05/2022