

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

MISC. LAND CASE APPLICATION NO.236 OF 2021
(Arising from Land Appeal No.49 of 2020)

AGNESS BUGIGO.....APPLICANT
VERSUS
CHIKU MOSHI CHANG'A (Administratrix of the estate of the late
MOSHI CHANGÁ)RESPONDENT

R U L I N G

Date of Last Order: 20.04.2022

Date of Ruling: 19. 05.2022

T. N. MWENEGOHA, J.

The applicant is seeking for a leave to appeal to the Court of Appeal of Tanzania, against the whole decision of this court, given by Makani J in Land Appeal No. 49 of 2020, dated 27th day of April of 2021.

The application was made under Section 5 (1) (c) of the Appellate Jurisdiction Act, Cap 141 and Section 47 (1) of the Land Disputes Courts Act, Cap 216 R. E. 2019. The same was accompanied by the affidavit of the applicant's Advocate, Sakina H Sinda. The application was heard orally and both parties appeared in person.

Submitting in favour of the application, the applicant prayed to adopt the affidavit and insisted that she wants to go to the Court of Appeal as she is not satisfied with the decision of Makani J.

In reply, the respondent simply prayed for the court to do justice as the property in dispute belonged to her late father.

In her rejoinder, the applicant reiterated her submission.

I have considered the arguments of the applicant as well as the affidavit in support of the application. The question for determination is whether the application has merit or not.

It was decided in **David Naburi as the Administrator of the estate of the late Maeda Naburi versus Stephen Sangu, Misc. Land Application No. 960 of 2017, High Court of Tanzania, Land Division, Dar Es Salaam, (unreported)** that, the following issues are to be considered when dealing with an application for leave to appeal to the Court of Appeal; (i) the rights of parties against who the decision of court which the intended appeal is sought, (ii) whether the decision in question is an appealable and (iii) there must be valid grounds as opposed to chance of success that the party wishes to appeal

In the instant application, the applicant has the right to appeal of which this court cannot interfere with. She deserves in my opinion, another forum to exercise her right to be heard by presenting her appeal against the impugned decision. Secondly, the decision in question is appealable, hence I find no reason to deny the applicant to pursue her intended course. As to the third issue, it is my view not it is important the Appellant is given a room to exercise her basic right, and appeal to the Court of Appeal.

In the end, the leave is hereby granted without costs.

It is so ordered.


T. N. MWENEGOHA
JUDGE

19/05/2022