

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 113 OF 2022

*(Arising from the decision of the High Court, Land Division in Land Appeal
No. 217 of 2017)*

MONY TERI PETITT APPLICANT

VERSUS

JEROME I. SHIRIMA 1ST RESPONDENT

ELIABI MGOLO 2ND RESPONDENT

STEPHEN ANTHONY 3RD RESPONDENT

FESTO NASHON 4TH RESPONDENT

EDMUND XOSA 5TH RESPONDENT

YAKOBO OMARI 6TH RESPONDENT

RULING

Date of last Order 31.05.2022

Date of Ruling 03.06.2022

A.Z.MGEYEKWA, J

This Court is called upon to leave to appeal to the Court of Appeal of Tanzania. The Judgment was in respect of Land Appeal No. 217 of 2017 which was dismissed with costs, thereby upholding the decision of the District Land and Housing Tribunal that was found in the respondents' favour. The application is preferred under the provisions of section 47 (1)

of the Land Disputes Courts Act Cap. 216 [R.E 2019]. The application is supported by two affidavits, the applicant's own affidavit and Mr. Mpaya Kamara, learned counsel for the applicant. The application was opposed by the respondent who filed a joint counter-affidavit sworn by Mr. Emmanuel Safari, the learned counsel for the respondents.

When the matter was called for hearing on 31st May, 2022 the applicant had the legal service of Mr. Mpaya Kamara, learned counsel, and the respondent enlisted the legal service of Mr. Othman Omary.

The applicant through his Advocate urged for this court to adopt the two affidavits and form part of his submission. The learned counsel was brief and straight to the point. Mr. Kamara submitted that the applicant was aggrieved by this court decision, hence, she lodged a notice of appeal and wants to base his appeal on the intended grounds of appeal. Supporting his submission he referred this court to annexure D. Mr. Kamara added that the grounds of appeal but they are not in a position to argue them.

On the strength of the above submission, he urged this court to allow the applicant's application to go to the Court of Appeal to challenge the decision of this court based on the intended grounds of appeal.

Submitting in rebuttal, the respondent's counsel held the view that this is not a fit case in respect of which leave may be granted. Mr. Othman

argued that the applicant's counsel stated that the reason that there is a judgment that they want to appeal is not a good reason. It was his view that in an application for leave the applicant must state clear points of law to be discussed by the Court of Appeal of Tanzania. He added that the counsel for the applicant has relied upon the fact that they have lodged a notice and an order of extension of time but the same is not a good reason for leave to be granted.

The learned counsel for the respondent went on to argue that the intended grounds of appeal are completely new issues that were not raised at the District Land and Housing Tribunal of this court. He elaborated on the grounds of appeal and argued that the applicant is complaining about the absence of the Village Council while the same was not claimed by the parties. He added that the applicant is contesting the admission of exhibits D2 and D3 while this court has never decided on the admissibility of the said exhibits and the said exhibits are not the base of the court's decision. He urged this court to invoke section 123 of the Evidence Act Cap.6. Mr. Othaman insisted that the applicant was required to raise grounds worthy of consideration by the Court of Appeal.

Finally, the learned counsel for the respondent prayed for this court not to grant leave to appeal.

In his rejoinder, the applicant's counsel submitted that they have noted an error in the cited law appearing in the chamber summons he prayed to cancel subsection (2) and replace the same with subsection (1) to read section 47 (1) of the Land Disputes Courts Act, Cap. 216.

Back to the wagon, Mr. Kamara reiterated his submission in chief. He argued that the appeal originated from the District land and Housing Tribunal thus this court is exerting its appellate jurisdiction over a judgment of the District land and Housing Tribunal. He added that the matter did not emanate from the Ward Tribunal thus the certification on point of law is inapplicable in the matter at hand. Stressing on the point of ground of appeal, he stated that there are points of law which they want to take to the Court of Appeal of Tanzania whereas this court is not called upon to decide upon the said grounds. The learned counsel in a nutshell narrated the grounds of appeal stressing that there are points of illegality in the impugned judgment. He insisted that it is not an optic moment at this juncture to argue the appeal.

Having heard the contending submissions of the learned counsels for the applicant and respondent, it now behooves the Court to determine whether the applicant and his counsel have raised sufficient grounds or a disturbing feature capable of engaging the Court of Appeal of Tanzania in the intended appeal.

It is the legal position ascertainment whether the legal threshold for granting an application for leave has been met, which entails carrying out a thorough evaluation of the averments made in the supporting affidavit. This implies that my focus in respect of this application will, by and large, be on the parties' depositions, and I will do that mindful of the established principle which recognizes the fact that, unlike submissions made by the parties, orally or in writing, affidavits are evidence. Again, leave to appeal must be on the satisfaction that the intended appeal raises issues of general importance or a novel point of law or where there is a prima facie, or arguable appeal as it was held in the case of **Sango Bay v Dresdner Bank A.G** [1971] EA 17, it was held that:-

*" Leave to appeal will be granted where **prima facie** it appears that there are grounds which merit serious judicial attention and determination by a superior Court."*

Guided by the above authority it is plain and certain that leave to appeal to the Court is grantable on such conditions were, with lucidity, expounded by the Court in the case of **British Broadcasting Corporation v Eric Sikujua Ng'maryo**, Civil Application No. 138 of 2004 (both unreported). In the case of **Rutagatina C. L. v The Advocates Committee and Another**, Civil Application No. 98 of 2010 the Court 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 or arguable appeal (see: Buckie v Holmes (1926) ALL £ R. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted."

Applying the above holding, the Court of Appeal emphasized that the disturbing features must be in the form of serious points of law that warrant the attention of the Court of Appeal. In the instant application, the central issue for my determination is whether the grounds raised by the applicants are embraced in the conditions set out in the above decisions of the Court for the grant of leave to appeal.

Reading the applicant's affidavit specifically paragraph 6 of the applicant's affidavit and paragraph 3 of the learned counsel's affidavit whereby they have raised issues of illegality. The counsel referred this court to Annexure 'D' the applicant has listed intended grounds of appeal. The counsel for the respondent opposed the application by stating that the applicant has not raised a clear point of law to enable the court to certify. He also came up forcefully that the intended grounds of appeal are completely new issues. I am not in accord with the submission of Mr.

Othman because the intended grounds of appeal for consideration and determination by the Court of Appeal of Tanzania raise a novel point of law. The determination of the merits or demerits of those grounds is the exclusive domain of the Court of Appeal after leave is granted.

I am convinced that the applicant's averments in paragraph 6, as supported by the arguments made by its counsel and the attached intended grounds of appeal are pertinent enough to attract the attention of the Court of Appeal's mind and enable it to make a finding thereon.

For the aforesaid reasons and findings, I hold the view that the application has met the legal threshold for grant of leave. Accordingly, the same is granted as prayed. Costs to be in the cause.

Order accordingly.


Dated at Dar es Salaam this date 3rd June, 2022.




A.Z. MGEYEKWA
JUDGE
03.06.2022

Ruling delivered on 3rd June, 2022 in the presence of the applicant and the respondent.




A.Z. MGEYEKWA
JUDGE
03.06.2022