

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 713 OF 2021

(Arising out of Land Appeal No. 200 of 2020 originating from the Judgment of the

District land and Housing Tribunal at Ilala in Land Application No. 239 of 2018)

RAMLA ALI APPLICANT

VERSUS

MWANAHARUSI RAMADHANI SAID 1ST RESPONDENT

JUMA MOHAMED MWENDA 2ND RESPONDENT

RULING

07/6/2022 & 29/6/2022

A. MSAFIRI, J

The applicant Ramla Ali has lodged this application under provisions of law referred in the chamber summons, seeking for the following orders:-

1. That this Honourable Court be pleased to grant leave to the applicant to appeal to the Court of Appeal.
2. Costs of this application may be provided for; and
3. Any other relief the Court may deem fit and just to order.

The application is supported by the affidavit of the applicant, and the affidavit of Dr. Rugemeleza Albert Kamuhabwa Nshala, the advocate of the applicant.

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The 1st and 2nd respondents also each filed the counter affidavit contesting the application.

On the consent of parties and leave of the Court, the application was heard by way of written submission. The applicant was represented by Dr. Rugemeleza Nshala, advocate, and the respondents represented themselves, appearing in person.

The applicant intends to appeal against the decision of Hon. Mwenegoha, J in Land Appeal No. 200 of 2020, which has overturned/set aside the judgment and decree of Ilala District Land and Housing Tribunal in Land Application No. 239 of 2018.

The applicant has stated in his affidavit that, she is aggrieved by the judgment and decree of the High Court as it failed to evaluate keenly the evidence presented during the trial which shows that, she had been using the easement in dispute since 2001, without interruption until 2017 when the dispute arose. That, the High Court held that the trial Tribunal determined the issue of limitation of the application without affording the parties the right to be heard yet the said High Court did not decide it but simply left it at that.

In the submissions, the counsel for the appellant, elaborated further on the averment in the affidavit of the applicant that, the Hon. Judge in impugned judgment, after having found that the trial Tribunal decided on the issue of limitation without affording parties to be heard, she would have expected

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to order the retrial or fresh hearing of the matter before another Chairperson with competent jurisdiction. However, she did not do that. Hence the counsel for the applicant was of the opinion that, the issue of jurisdiction has not been resolved and for that matter, any judgment ensued from such proceedings is faulty. He said that, the applicant sees that this is an important point that merits the attention of the Court of Appeal for determination.

In her affidavit, the applicant has mentioned five grounds of intended appeal which are;

1. That the trial Judge erred to allow the appeal on ground that the limitation issue was not discussed in the appeal yet the said matter arose from the fact that I had used the disputed land (easement) including its 3 metres width unchallenged from 2001 to 2017 by all including the respondents;
2. That the first appellate judge erred to not rule(sic) on the issue of limitation which can be raised at any time even during the appeal which also touched on the jurisdictional aspect of the Tribunal and the Court itself.
3. That, the first appellate judge failed to evaluate properly all the evidence that were preferred at the District Land and Housing Tribunal for Ilala the failure of which led her to overturn the otherwise proper Judgment of the said Tribunal.
4. That the first appellate Court overturned the judgment of the Tribunal without resolving the issue of limitation or ordering the same


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to be determined by the tribunal properly after affording the parties the opportunity to be heard.

5. That the proceedings and the appeal at the first appellate Court were marred with material irregularity.

The counsel for the applicant stated that, the above five grounds shows that there is a prima facie case which merits the grant of leave to enable the Court of Appeal to hear the applicant.

To cement his submissions, he cited the cases of **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo**, Civil Application No. 138 of 2004 (unreported) and **Jirey Nestory Mutalemwa vs. Ngorongoro Conservation Area Authority**, Civil Appeal No. 154 of 2016 (unreported). He concluded by praying for this Court to grant the application with costs.

In reply, the 1st respondent, briefly contended that, it is agreed that the right of appeal exists for the parties who are aggrieved but that appeal is not automatic. That is governed by the principle laid out in the case of **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo (supra)** as cited by the applicant, the applicant has failed to meet the said principle. That, according to the principle in the cited case, leave of appeal will only be granted where the grounds of appeal raises issue of general importance or novel point of law or where grounds of appeal show a prima facie or arguable grounds. 

The 1st respondent stated that the intended grounds of appeal raised in the affidavit of the applicant does not disclose arguable points. To her opinion, the trial Tribunal and the appellate High Court did evaluate the evidence, and the issue of limitation was not raised or discussed anywhere so it cannot be among the arguable issue before the Court of Appeal. She prayed for the application to be dismissed with costs.

The 2nd respondent also submitted in opposition of the application. He started his submission by praying to adopt his counter affidavit as part of the submission. He stated that, the guiding principle on whether to grant the applicant is if the applicant has shown issue of general importance or a point of law in her application for leave.

That, in the applicant's affidavit as well as her written submission, the applicant claims that the main reasons for applying for leave first is due to the fact that limitation issue was not discussed, and second is that the Hon. Judge failed to evaluate properly all the evidence which was preferred at the trial Tribunal. The 2nd respondent submitted further that, the issue of time limitation was clearly explained by the Judge at page 5 of the judgment, and in addition, the Judge evaluated all the evidence adduced at the trial Tribunal.

He averred that there is no issue of general importance for the applicant to be granted leave to appeal to the Court of appeal. To cement his points, he cited several authorities among them being the case of said **Ramadhani**

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Muyanga vs. Abdallah Saleh [1996] TLR 75 and the case of **Mapambano Michael Mayanga vs R.**, Criminal Appeal No. 268 of 2015, CAT at Dodoma (unreported). He prayed for the dismissal of the application in its entirety, with costs.

The counsel for the applicant in rejoining the submissions by the 1st respondent stated that on the issue of limitation, it is not true that it was not discussed anywhere as claimed by the 1st respondent. The counsel quoted the records of the trial Tribunal, at page 8 and 9 of the judgment of trial Tribunal where he claims that the issue of limitation was discussed. Also the counsel quoted the High Court judgment at page 4 to 5 where the issue of limitation was raised and determined. He reiterated his prayers in the submission in chief.

As the parties have correctly submitted, for the Court to grant leave to appeal to the Court of Appeal, the applicant has to establish that the intended appeal involves serious points which require the attention of the Court of Appeal. This position was stated in among other authorities, the case of **British Broadcasting Corporation vs. Erick Sikujua Ng'maryo, (supra)**, where it was 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 novel point of law or where the grounds shows a prima facie or arguable appeal (see: Buckle vs. Holmes (1926) All E.R 90 at page 91)"

91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave should be granted"

I have read the intended grounds of appeal as they have been disclosed in the affidavit of the applicant. I have also read the counter affidavits of the respondents and considered the rival submissions and I am satisfied that the grounds of intended appeal raise arguable issues which deserve attention of the Court of Appeal.

It should be noted that, my duty in this application is not to determine the merits or demerits of the points raised by the applicant when seeking leave to appeal. Instead, a Court has only to consider whether the proposed issues are embraced in principle set out in the hereinabove referred authority. Basing on that, I am satisfied that the intended appeal is neither frivolous nor vexatious, and the applicant deserve a day before the Court of appeal.

Consequently, I find the applicant has disclosed points of law worthy of consideration by the Court of Appeal. I therefore grant the application. Costs shall follow the event.





A. MSAFIRI,
JUDGE
29/06/2022