

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 147 OF 2022**

*(Arising from the decision of Land Appeal No. 209 of 2020 delivered by  
Honorable Justice Masoud on 21<sup>st</sup> day of June, 2021)*

**VERONICA HASSAN KISHAI ..... APPLICANT**

**VERSUS**

**SUZAN SALUM MALANGAI ..... 1<sup>ST</sup> RESPONDENT**

**DORIKAS SALUM MALANGAI ..... 2<sup>ND</sup> RESPONDENT**

**HASSAN KISHAI ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

*Date of Last order: 22.06.2022*

*Date of Ruling: 22.06.2022*

**A.Z.MGEYEKWA, J**

This is an application for leave to appeal to the Court of Appeal of Tanzania against this Court in Land Appeal No. 209 of 2020 delivered on 29<sup>th</sup> June, 2021. The Application is brought under section 47(2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. This Court upon being satisfied with proof of service to all the defendants, the matter proceeded

*ex parte* against the 2<sup>nd</sup> respondent but in presence of the 1<sup>st</sup> and 3<sup>rd</sup> respondents.

When the matter came for hearing on 22<sup>nd</sup> June, 2022 the applicant enlisted the legal service of Mr. Mashiku Sabasaba, learned Advocate, while the 2<sup>nd</sup> and the 3<sup>rd</sup> respondents appeared in person, unrepresented.

In his submission, Mr. Mashiku's submission was premised on what is stated in the supporting affidavit, deposed by Veronica Hassan Kishai. He urged this court to adopt the applicant's affidavit and form part of his submission. The learned counsel for the applicant was brief and focused. He submitted the applicant was dissatisfied by the decision of this Honourable Court in Land Appeal No. 209 of 2020 delivered on 21.06.2021, hence he lodged the instant application for leave to appeal to the Court of Appeal of Tanzania.

Mr. Mashiku stated that leave to the Court of Appeal is dependent on the applicant's ability to demonstrate that there is a point worthy of consideration by the Court of Appeal. It was his submission that the reason for applying for leave is because the 1<sup>st</sup> respondent was declared the lawful owner without any cogent evidence as to how he acquired the suit land. In his view, this is a point of law that attracts the attention of the Court of Appeal of Tanzania. He further stated that the Applicant has already lodged a Notice of Appeal to the Court of Appeal. To buttress his

submission he referred this court to Annexure VK1. He added that the applicant has a great chance of success.

On the other hand, the 1<sup>st</sup> and 3<sup>rd</sup> respondents did not contest the applicant's application.

After a careful consideration of the parties' submission, the issue for determination is *whether the application has raised sufficient grounds or a disturbing feature capable of engaging the Court of Appeal in the intended appeal.*

It is trite law that the grant of leave to appeal to the Court of Appeal is premised on the applicant's ability to demonstrate that there are points of law or fact that have been decided by the High Court but need to be revisited by the Court of Appeal before rights of the contending parties are conclusively determined. To bolster the same, there are several precedents supporting this position. In the cases of **Jireys Nestory Mutalemwa v Ngorongoro Conservation Area Authority**, Civil Application No. 154 of 2016 (unreported), **OTTU on Behalf of Milanzi and Others v Blanket Manufacturers Ltd** (Unreported), and **Gaudencia Mzungu v IDM Mzumbe**, Civil Application No. 94 of 1999 CAT (Unreported) in the case of **OTTU** (supra) it was held that:-

*“What is important is whether there are prima facie grounds meriting an appeal to this Court. The echo stands as guidance for the High court and Court of Appeal.”*

The emphasis drawn in the fore mentioned authority, is that leave to appeal to the Court of Appeal will only be granted if there are arguable grounds, premised on serious points of law or law and fact. The grounds of appeal must raise issues of general importance or a novel point of law, or where there is a prima facie or arguable appeal.

Moreover, the grant of leave to appeal is not automatic rather, it is discretional of the Court and the Court can only exercise such discretion if the party has been able to present an arguable case. This position was accentuated in the case of **Bulyanhulu Gold Mine Ltd v Petroiube (T) Ltd & Another**, Civil Application No. 364/16 of 2017 CAT (unreported), it was held that:-

*“Needless to say, leave to appeal is not automatic. It is within the discretion of the court to grant or refuse leave. The discretion must however judiciously exercised and on the materials before the court. 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 prima facie or arguable appeal (see: Buckle v Holmes (1926) All E.R. 90*

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

The same was decided by the Court of Appeal of Tanzania in the cases of **British Broadcasting Corporation v. Eric Sikujua Ng'maryo**, -Civil Application No. 138 of 2004 (unreported) and **National Bank of Commerce v Maisha Musa Uiedi (Life Business Centre)**, CAT-Civil Application No. 410/07 of 2019.

The applicant's argument is based on the grounds deposed in paragraph 2, these are the grounds that the applicant believes are solid grounds, and argues that they are attracting the attention of the Court of Appeal of Tanzania. The grounds which are considered to be worthy of consideration by the Court of Appeal are as reproduced hereunder:

- 1. Whether it was proper and right for the Court to grant ownership of the suit property to the 1<sup>st</sup> Respondent despite the fact that she did not tender the alleged sale agreement of the suit land.*
- 2. Whether it was proper and right for the court to grant ownership of the suit land to the 1<sup>st</sup> respondent without first determining whether the suit house and other premises are situated in the suit land.*
- 3. After having condemned the evidence of the 1<sup>st</sup> respondent for being full of lies, whether it was proper for the tribunal to rely on the said evidence and grant ownership of the suit land.*

I take the view that there are important questions that constitute an arguable case, serious enough to engage the minds of the Justices of Appeal who will determine the appeal. In my opinion, these issues are neither frivolous or vexatious. In my considered view, the above-mentioned grounds are fit in respect of which the guidance of the Court of Appeal of Tanzania is required.

In consequence, this application succeeds. The applicant is granted leave to appeal to the Court of Appeal. Costs to be in the cause.

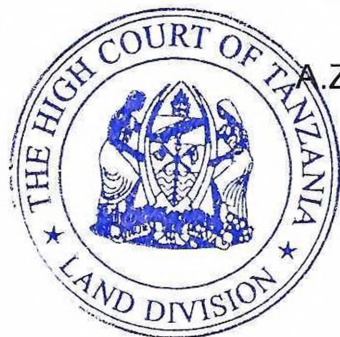
Order accordingly.



A.Z. MGEYEKWA  
JUDGE

22.06.2022

Ruling delivered on 22<sup>nd</sup>, June, 2022 via video conferencing whereas Mr. Mashiku, learned counsel for the applicant. 2<sup>nd</sup> and 3<sup>rd</sup> respondents were remotely present.



A.Z. MGEYEKWA  
JUDGE

22.06.2022