

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

MISC. LAND APPLICATION NO. 666 OF 2021
(Arising from Miscellaneous Land Application No. 251 of 2021)

SIKUDHANI JAFARI APPLICANT
VERSUS
ANTIPAS ROMANI TAIRO RESPONDENT

Date of last Order: 05/05/2022

Date of Ruling: 17/06/2022

RULING.

I. ARUFANI, J

Before me is an application for leave to appeal to the Court of Appeal of Tanzania against the whole decision of this court made in Miscellaneous Land Application No. 251 of 2021. 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 affirmed by the applicant. When the matter came for hearing the applicant appeared in the court in person and the respondent was represented by Mr. Kephass Mayenje, learned advocate. The applicant prayed the application to be heard by way of written submission and the court granted the prayer and ordered the matter to be argued by the way of written submission.

In supporting the application, the applicant prayed to adopt the contents of her affidavit and argued that, she is seeking for leave of the court to appeal to the Court of Appeal against the decision made by Hon. Dr. Mwenegoha, J in Miscellaneous Land Application No. 251 of 2021. The applicant stated that, she has already filed notice of appeal in the Court of Appeal as per requirement of the law provided under Rule 83 (1) of the Tanzania court of appeal Rules, 2009 G.N No.368 of 2009 as amended from time to time. She submitted that her prayer for leave to appeal to the Court of appeal is based on the following grounds: -

- 1. Appeal is my constitutional right to challenge the decision which I am aggrieved in order to obtain a legal remedy of what I am not satisfied.*
- 2. That, I am aggrieved and dissatisfied with the whole decision of this High Court in Miscellaneous land application No. 251 of 2021 delivered on 26/10/2021 and I give notice of appeal as per law under Rule 83 of the Tanzania Court of Appeal Rules.*
- 3. Leave to appeal or application for leave to appeal is a requirement of law as per section 47(2) of the Land Disputes Courts Act Cap 216 R.E 2019) in order to exhaust remedies and right of the aggrieved party.*
- 4. That, the decision entered by Hon. Mwenegoha Judge is un law (sic) and contradictory because the Honorable Court Dismissed the points and at the same time accepted the same points by giving orders against the respondent. This is*

contradiction and ambiguity and it creates conflicting decision.

- 5. The respondent failure to comply with the order and give mandate to the High Court to dismiss the whole case vide Miscellaneous Land Application No.251 of 2021 but the court has not taken that action or it takes wrong action in violation of law.*
- 6. That, limitation of time the respondent failed to controvert or reply the applicant written submission and no leave or extension of time was granted by the court. Every thing was out of time in violation of the law but the court is silent.*
- 7. The respondent has created a confusion and contradiction between two different cases vide:*
 - (a) Miscellaneous Land Application No.251 of 2021 and*
 - (b) Civil Application No.251 of 2021. These are two different cases in the eyes of law with different parties to cater for.*

She submitted that, the above stated grounds are sufficient for going to the Court of Appeal and stated she has complied with the requirement of the law. She prayed all the content of her affidavit to be adopt and at the end she prayed the application be granted.

On the other hand, the counsel for the respondent replied that, the submission filed in the court by the applicant does not support the facts pleaded in the affidavit in support of the application. He stated that, the

applicant submission has introduced new facts and new ground in the matter which were not pleaded in the affidavit and prayed the court to disregard the applicant's written submission.

He went on arguing that, the applicant has not demonstrated serious and contentious point of law fit for consideration by the court of appeal. He referred the court to the case of **Simoni Kabaka Daniel V. Mwita Marwa Nyang'anyi and Others**, [1989] TLR 64, where it was stated that, in application for leave to appeal to the Court of Appeal the application must demonstrate that there is a point of law involved for the attention of the court of appeal. He argued that, the application of the applicant is not demonstrating any point of law worth to be considered by the Court of Appeal.

He argued that, the points of preliminary objection raised by the applicant were properly dismissed. He stated there was neither contradiction nor ambiguity in the ruling issued by the court and added that, even if there is a contradiction or ambiguity that is issue of fact and not law. He added that, the facts deposed in the affidavit does not reveal what is supposed to be considered by the Court of Appeal but rather they are general statement which are lacking the test of point of law.

He finalized his submission by stating that, for the issue of constitutional rights to appeal the High court is given an enormous power

concerning appeal without limitation in order to control influx of appeals to the court of appeal with trivial issue like the present one. At the end he stated the intended appeal is based on facts and not the points of law and prayed the application be dismissed with costs.

In her rejoinder, the applicant reiterated what she submitted in her submission in chief and added that, the application for leave to appeal to the Court of Appeal from the decision of this court does not require a certificate on points of law involved to be demonstrated. She stated it is a constitutional right of appeal which involves leave process under section 47(2) of the Land Dispute Courts Act for the matter originating from the District Land and Housing Tribunal.

She stated the counsel for the respondent has confused with the matters originating from Ward Tribunal filed in the court under section 47 (3) of the same law certifying that there is a point of law involved in appeal which is not in the present case. She submitted that the present case is falling under section 47 (2) of the Land Disputes Courts Act which has no requirements of points of law involved to be established for leave to appeal to be granted.

The court has carefully considered the rival submission from both sides and it has gone through the affidavit and counter affidavit filed in this court by the parties. The court has found the issue to determine in

this application is whether the applicant deserve to be granted leave to appeal to the Court of Appeal. The court has found that, section 47 (2) of the Land Disputes Courts Act provides for requirement of leave form the High Court or Court of Appeal to appeal to the Court of Appeal against the decision of this court made in its revisional or appellate jurisdiction.

For clarity purpose the cited provision of the law states as follows: -

"A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may, with leave of the High Court or Court of Appeal, appeal to the Court of Appeal."

That being the position of the law the court has found the applicant is seeking for leave to appeal against the decision of this court made in Miscellaneous Land Application No. 251 of 2021 delivered on 26th October, 2021. As stated to the court by the counsel for the respondent, the applicant is seeking for leave of the court to appeal to the Court of Appeal against the ruling made by the court in the point of law raised in a preliminary objection raised by the applicant.

The counsel for the respondent told the court that, the applicant raised a point of preliminary objection in Miscellaneous Land Application No. 251 of 2021 that, the mentioned application had been made under wrong provision of the law. After hearing the parties in respect of the said

point of preliminary objection the court overruled the said point of preliminary objection but allowed the respondent who is applicant in the said application to insert the proper citation of the law in the chamber summons.

The court has found the applicant has also deposed at paragraph 3 of her affidavit that, the decision is appealing against is contradictory and the points raised had merits to dispose of the whole matter. The court has also found the applicant has argued in her submission that, the decision she intends to appeal against is illegal and contradictory because the court dismissed the points of objection she had raised and at the same time accepted the same points by ordering the respondent to rectify his chamber summons. She has stated further in her submission that, the stated contradiction is ambiguous and is creating conflict of decisions.

From what has been found is deposed in the affidavit of the applicant and what was stated to the court by the counsel for the applicant the court has found that, when they are put together with what is argued in the submission from both sides, they demonstrate the decision the applicant wish to appeal against is an interlocutory decision.

The court has found the said decision is an interlocutory decision after seeing the meaning of the term interlocutory decision can be deduced from definition of the term interlocutory proceedings given in

Jowitt's Dictionary of English Law which states interlocutory proceedings includes all proceedings which are incidental to the principal object of the action namely judgement. That being the position of the law the court has found the question to determine here is whether the decision which the applicant is seeking leave to appeal is appealable in law. The court has found that, our law and specifically section 5 (2) (d) of the Appellate Jurisdiction Act, Cap 141, R.E 2019 is very clear that no appeal is allowed to lie to the Court of Appeal from the decision or order of the High Court made on interlocutory decision or order. For clarity purpose the cited provision of the law states as follows: -

"No appeal or application for revision shall lie against or be made in respect of any preliminary or interlocutory decision or order of the High Court unless such decision or order has the effect of finally determining the suit."

From the wording of the above cited provision of the law it is crystal clear that, no appeal or application for revision is allowed to lie to the Court of Appeal against the decision or order of the High court which has no effect of finalizing the matter before the court. Now the decision the applicant is seeking for leave to appeal against to the Court of appeal is an interlocutory decision which did not finalize the matter before the court as the respondent was ordered to amend his chamber summons by

inserting proper citation of the law so that they can proceed with hearing of the matter.

The court has been of the view that, although the applicant has deposed in her affidavit and stated in her submission that the decision, she want to appeal against is contradictory and unlawful but that alone cannot move the court to grant the applicant leave to appeal to Court of Appeal against the interlocutory decision of this court which in law is neither appealable nor revisable. The above finding of this court is getting support from the case of **Harban Haji Mosi & Another V. Omari Hilaa Seif & Another**, Civil Reference No.19 of 1997 where the Court of Appeal stated that, the purpose of putting a provision of law requiring a person want to appeal to the Court of Appeal to seek for leave to appeal before going to the Court of Appeal is to spare the Court of Appeal from the spectre of unmeriting matters and enable the court to give adequate attention to cases of true public importance.

Therefore, to grant the applicant leave to appeal to the Court of Appeal against the decision which the law is very clear that is neither appealable nor revisable is to go contrary to the requirement of the law. If the applicant sees the decision made by the court in the said interlocutory decision is contradictory and unlawful as deposed in her affidavit she is required to wait until the final determination of the matter

and if she will not be satisfied with the final decision of the matter, she can appeal to the Court of Appeal by basing on the ground formulated from the impugned interlocutory decision.

In the premises and without wasting more time to deal with other arguments raised in the submission of the parties the court has found the application at hand is devoid of merit and is hereby dismissed in its entirety. After taking into consideration the circumstances of the matter the court has found it is proper for the interest of justice to order each party to bear his or her own costs. It is so ordered

Dated at Dar es Salaam this 17th day of June, 2022



I. Arufani

JUDGE

17/06/2022

Court:

Ruling delivered today 17th day of June, 2022 in the presence of the applicant in person and in the presence of Mr. Mwang'enza Mapembe, learned advocate for the respondent. Right of appeal to the Court of Appeal is fully explained.



I. Arufani

JUDGE

17/06/2022