

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 139 OF 2022

(Arising from the Ruling of the High Court of Tanzania (Land Division) at Dar es Salaam Hon. V. I. Makani, J. in Misc. Land Application No. 106 of 2021 dated 28th February 2022)

ATHUMANI ALLY KARANDA.....APPLICANT

VERSUS

KARIMU LADHA.....RESPONDENT

Date of last order: 27/6/2022

Date of ruling: 20/7/2022

RULING

A. MSAFIRI, J.

On 4th April 2022, the above named applicant lodged the present application, by chamber summons under Sections 47(2) of the Land Disputes Courts Act [CAP 216 R.E 2019] and 5(1)(c) of the Appellate Jurisdiction Act [CAP 141 R.E 2019] seeking for the following reliefs namely;

- a. This Honourable Court may be pleased to grant leave to the applicant to appeal to the Court of Appeal of Tanzania against decision of High*

Alle.

Court of Tanzania (Land Division) at Dar es Salaam in Misc. Land Application No. 106 of 2021 by Hon. V. I. Makani J. dated 28/02/2022.

b. Costs of this application follow the event.

c. Any other further relief(s) that this Honourable Court may deem fit, just and equitable to grant.

The application has been taken at the instance of the applicant and is supported by an affidavit affirmed by the applicant himself and contested by the respondent who filed his counter affidavit.

When the application was called on for hearing on 27/6/2022, parties appeared in person, they had no legal representation. The application was disposed orally.

The applicant having adopted the affidavit in support of the application, urged the court to grant him leave to appeal to the Court of Appeal because there are illegalities in both decisions of the trial Tribunal as well as the decision of this Court in Misc. Land Application No. 106 of 2021. The applicant contended further that he was availed with copies of

Alle

judgment and decree of the District Tribunal out of time that is why he delayed in filing an appeal on time.

On reply, the respondent having adopted his counter affidavit, urged the court not to grant the application because the matter has taken long time. Regarding the fact that the applicant was supplied late with copies of judgment, the respondent contended that the applicant has not proved these claims.

On rejoinder the applicant simply reiterated his submission in chief. Having gone through the submissions of parties rival and in support of the application, the point for my determination is whether the application has merits.

As stated before, the applicant is seeking leave of this Court to lodge an appeal to the Court of Appeal as he was aggrieved with the ruling of this Court in Misc. Land Application No. 106 of 2021. In the said application the applicant was seeking an extension of time to appeal against the judgment and decree of the District Land and Housing Tribunal for Temeke in Land Application No. 194 of 2019. *Alle*

Having heard the parties, this Court dismissed the application for want of merits. The applicant intends to challenge the said decision therefore as mandatorily required, leave of this court has to be sought first, hence the present application.

In the present application on paragraph 7 of the affidavit in support of the application, the applicant has raised a total of three (3) points to be addressed by the Court of Appeal as follows;

i. That the Hon. Court erred in law and fact to dismissed [sic] the application without putting into consideration that the delay was caused by the court itself for failure to supply a copy of judgment in time.

ii. That the Hon. Court erred in law and fact to dismiss the application with the reason that the applicant failed to account the day for delay[sic] while all the time spend [sic] for making follow up to correct [sic] the copy of judgment.

iii. That the Hon. Court erred in law and fact to dismiss the application by looking only the date wrote [sic] in

Alle.

the judgment without hearing the applicant on the date collected the copy of judgment.

In an application for leave like the present one there are conditions to be considered upon which leave to appeal is grantable. Such conditions were expounded in the decision of the Court of Appeal in **British Broadcasting Corporation v Erick Sikujua Ng'maryo** Civil Application No. 138 of 2004 (unreported). In that case the Court of Appeal stated 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 a prima facie or arguable appeal (see: **Buckle v Holmes (1926)** ALL E. R. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical no leave will be granted".*

Alle.

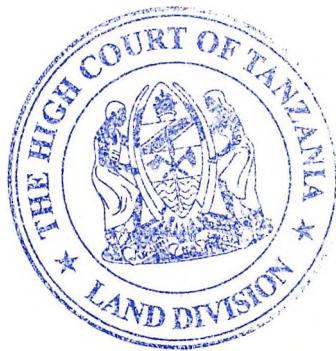
From the foregoing quoted decision, it is imperative to note that the grant of leave is not automatic but conditional in that it can only be granted where the grounds of the intended appeal raise arguable issues in the appeal before the Court. Furthermore my duty in this application is not to determine the merits or demerits of the grounds of appeal raised when seeking leave to appeal. Instead I only have to consider whether the proposed issues are embraced in conditions set out in **British Broadcasting Corporation v Eric Sikujua Ng'maryo [supra]**, as it was stated in the case of **The Regional Manager-TANROADS Lindi v DB Shapriya and Company Ltd**, Civil Application No. 29 of 2012 CAT (unreported), it was held;

"It is now settled that a Court hearing an application should restrain from considering substantive issues that are to be dealt with by the appellate Court. This is so in order to avoid making decisions on substantive issues before the appeal itself is heard".

Hence the applicant was only required to show in his affidavit the arguable grounds for determination by the Court of Appeal, which in the present matter the applicant has successfully shown grounds worthy of *Alls.*

consideration by the Court of Appeal. This is clearly seen on paragraph 7 of the affidavit in support of the application.

Consequently the application is meritorious and the applicant is hereby granted leave to appeal to the Court of Appeal of Tanzania. Costs to follow the event.



A handwritten signature in blue ink, appearing to read "A. Msafiri". The signature is written over a horizontal dotted line.

**A. MSAFIRI,
JUDGE
20/7/2022**