

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

MISC. LAND APPLICATION NO. 733 OF 2021

(Arising from Land Appeal No. 99 of 2014 before High Court (Land Division) which originated from Land Application No. 44 of 2013 of the District Land and Housing Tribunal of Morogoro District at Morogoro)

LAURENT MARTIN MPEKA APPLICANT

VERSUS

BERTHA JOHN GITA RESPONDENT

Date of last hearing: 11/05/2022

Date of Ruling: 01/07/2020

RULING.

I ARUFANI, J

Before me is an application for leave to appeal to the court of appeal. The application is made under section 47 (2) of the Land Disputes Courts Act, Cap 216, [R.E 2019] and Section 5 (1) (c) of the Appellate Jurisdiction Act, Cap 141, [R.E 2019]. The applicant is seeking for leave to appeal to the Court of Appeal against the decision of this court issued in Land Appeal No. 99 of 2014 delivered on 28th April, 2016.

The application is supported by the affidavit of the applicant and is opposed by the counter affidavit sworn by Josephine Boniphace, advocate for the respondent. When the matter came for hearing on 11th May 2022, the applicant appeared in the court in person and the respondent was

represented by Mr. Bitamo Marko, learned advocate holding brief of Ms. Josephine Boniface, Advocate.

In support of the application, the applicant told the court that, he is praying for leave to appeal to the court of appeal as he was not satisfied by the decision issued by Hon. Ndika, J (as he then was) in Land Appeal No. 99 of 2014. He argued that, the issue of photocopy of the sale agreement was not raised in the case. He stated what was being prayed by the respondent was for him to pay Tshs. 1,727,500/= so that the TRA can transfer ownership of the house to the respondent.

He added that, the issue of photocopy of refund of money was not an issue at the trial court and up to now the respondent is collecting rent and they have collected about Tsh.30,000,000/= which means they have already got the money they were claiming from him. He submitted that he wants the Court of Appeal to quash the decision of this court because an execution of the agreement has already been done. He added that, the respondent has already collected Tshs. 32,000,000/=from his house while he paid him only Tshs. 10,000,000/=.

In his reply, the counsel for the respondent told the court that, the applicant entered into agreement of selling his house to the respondent at a price of Tshs. 17,000,000/= and it was agreed the payment would have been made by two instalments. He stated it was agreed the

instalment of Tshs. 10,000,000/= was supposed to be paid first and the second instalment of Tshs. 7,000,000/= was supposed to be paid later on. Thereafter the house was to be transferred to the purchaser and the documents of ownership of the house were given to the purchaser of the house.

He submitted the applicant is not entitled to be granted leave to go to the Court of Appeal because the evidence adduced by the applicant before the trial tribunal was not enough to prove his case. He argued that, the documents tendered before the trial tribunal by the applicant did not comply with the requirement provided in the Evidence Act, Cap 6, [R.E 2002]. He argued that, section 67 of the Evidence Act requires documents to be proved by primary evidence.

He submitted that, the chance of the applicant to succeed in the intended appeal is negligible because the grounds used to determine his case was legal points. He prayed the court to refer the case of **Paul Juma Diesel & Auto Electric Services Limited & Two Others**, Civil Application No. 183 of 2007, CAT at DSM (unreported) cited in the ruling issued by Ndika J, where it was stated that, leave is grantable where the proposed appeal stand reasonable chances of success. He argued further that, the question of the court to refuse or to accept the copy of the

agreement of the parties was a legal point and it was fully determined. He submitted there is no chance of success in the intended appeal.

In his rejoinder, the applicant stated the issue of the document to be photocopy or original was not raised as an issue in the proceeding of the tribunal. He prayed to be granted leave to go to the court of appeal as Hon. Ndika, J erred in dealing with the issue of photocopy which had not been raised by the respondent.

Having carefully considered the submission from the parties and after going through the affidavit and counter affidavit filed in the court by the parties the court has found the issue to determine in this application is whether the applicant has managed to satisfy the court, he deserves to be granted leave to appeal to the Court of Appeal. The court has found it has been stated in numerous cases decided by this court and the Court of Appeal that, in an application for leave to appeal to the Court of Appeal the court is required to be satisfied the grounds of appeal intended to be taken to the Court of Appeal show prima facie case or arguable appeal before granting the application.

The stated position of the law can be seen in the case of **British Broadcasting Corporation V. Eric Sikujua Ngyimaryo**, Civil 7 Application No. 138 of 2004, CAT at DSM (unreported) where the Court of Appeal 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 fade case or arguable appeal."

While being guided by the position of the law stated in the above cited case the court has gone through the affidavit of the applicant and find the ground proposed by the applicant as the grounds he want to be considered and determined by the Court of Appeal are listed at paragraph 12 of his affidavit. The grounds proposed in the said paragraph of the affidavit of the applicant read as follows: -

- 1. Whether the District Land and Housing Tribunal has no jurisdiction to entertain and determine cases involving claims for refund of the purchase price of the landed property*
- 2. Whether oral evidence does not have credibility on deciding land disputes.*
- 3. Whether the contract for disposition of a right of occupancy where the purchase price was not paid in full can be complete in absence of another contract.*
- 4. Whether the absence of original documents in record can reverse decision of the case.*

After reading the above proposed grounds of appeal the court has considered the submission made by the counsel for the respondent that the applicant is not entitled to be granted leave to appeal to the Court of

Appeal because he had no evidence to prove his case but failed to see any merit in the stated argument. The court has come to the stated finding after seeing it was stated in the case of **Bulyahulu Gold Mine Limited & Two Others V. Petrolube (T) Limited**, Civil Application No. 364/16 of 2017, CAT at DSM (unreported) that, in an application for leave to appeal to the Court of Appeal the court is required to determine whether leave should be granted and not to determine whether the proposed grounds of appeal have merit or not.

The similar view was stated in the case of **Grupp V. Jangwani Sea Breeze Lodge Ltd**, Commercial Case No. 93 of 2002 cited with approval in the case of **Fortunatus Lwanyantika Mosha V. Icea Lion Insurance Co. Ltd & Another**, Misc. Civil Application No. 143 of 2020 HC at Mwanza (unreported) where it was stated that, this court has no jurisdiction to go into merits or deficiencies of the impugned decision of this court but only to determine whether there is arguable issues fit for consideration by the Court of Appeal.

Basing on the above stated position of the law the court has found the proposed grounds of appeal raised by the applicant are arguable grounds worth to be considered and determined by the Court of Appeal. It is because of the above stated reasons the court has found the applicant has managed to satisfy the court he deserves to be granted leave to

appeal to the Court of Appeal against the judgment of this court delivered in Land Appeal No. 99 of 2014.

Consequently, the application is granted and the applicant is granted leave to appeal to the Court of appeal. Each party to bear his own costs. It is so ordered.

Dated at Dar es Salaam this 01st day of July, 2022.



I. Arufani

JUDGE

01/07/2022

Court:

Ruling delivered today 01st day of July, 2022 in the presence of the applicant in person and in the presence of Ms. Josephine Boniphace, learned advocate holding brief of Mr. Bitamo Marco, advocate for the respondent. Right of Appeal to the Court of Appeal is fully explained.



I. Arufani

JUDGE

01/07/2022