

IN THE HIGH COURT OF TANZANIA
LAND DIVISION
AT DAR ES SALAAM
MISC. LAND APPLICATION NO. 123 OF 2022
(Arising from Land Appeal No. 100 of 2021)

RENATUS E. NGABAN 1ST APPLICANT
VERIMUNDI MORRO 2ND APPLICANT
PRISCUS TARIMO 3RD APPLICANT

VERSUS

ATHUMANI NASORO JAKWENGWA RESPONDENT

RULING

Date of last Order: 08.07.2022

Date of the Ruling: 12.07.2022

A.Z.MGEYEKWA, J

In this application, the Court is called upon to grant leave that will enable the applicant to institute an appeal to the Court of Appeal of Tanzania against the decision of the Court (Hon. V. L. Makani J.), dated 21st February, 2022.

The Judgment was in respect of Land Appeal No. 100 of 2021 which was allowed with costs. The impending appeal is intended to right the 'wrongs' allegedly committed by the Court. Supporting the application are the affidavits deposed by the applicants themselves, wherein grounds of grievance of the applicants with the impugned decision are contained.

The application has met an opposition, fielded by the respondent, through his counter-affidavits. The respondent in paragraph 10 of his counter-affidavit disputed that the applicants have failed to advance any reasonable ground moving this court to grant leave to appeal to the Court of Appeal.

When the parties appeared in court, the hearing of the matter was through written submissions the filing of which followed the schedule drawn by the Court.

Submitting for the applicant was Mr. Raphael, counsel, whose submission was premised on what is stated in the supporting applicant's affidavit. In his submission, he urged this court to adopt his affidavit to form part of his submission. Mr. Raphael submitted that there are strong points arguable to their court if leave is granted. Fortifying his submission he cited the case of **Mambele Mtumwa Shamte v Asha Juma**, Civil Application No. 45 of 1999 (unreported). The Court of Appeal of Tanzania held that:-

" Unfortunately, it is not provided what factors are to be taken into account when considering whether or not to grant leave to appeal to this court. However, it is obvious that leave will only be granted if the intended appeal has some merits whether factual or legal."

He also cited the cases of **Gaudensia Mzungu v The IDM Mzumbe**, Civil Application No. 94 of 1999 (unreported), **Vumi Mgunila v Mayunga Nijle** HC at Mwanza (unreported), and **Brown Haule v Jackline Kalesa**, HC at Sumbawanga (unreported). The grounds which are considered to be worthy of consideration by the Court of Appeal are crystalized as hereunder:-

- (a) Whether the purchaser qualifies to become a bonafide purchaser.*
- (b) Whether this court was justified to disregard the decision of the Court of Appeal in Susan v Warioba v Shija Dalawa, Appeal No. 44 of 2017 which defined bonafide purchaser.*
- (c) Whether the principal of buyer be aware was proved.*
- (d) Whether signature by way of initials letter can be compared and found differently.*
- (e) Whether the court can draw an inference in a situation where the witness's whereabouts is unknown.*

The applicant continued to submit that there numerous issues which arise. To support his submission he referred this court to paragraph 4 of the applicant's affidavit.

In conclusion, the applicant urged this court in the interest of justice to grant the applicant's application.

In reply, the respondent's counsel began to narrate the genesis of the matter which I am not going to reproduce in the matter at hand. Mr. Kisyeri contended that the law requires that leave to appeal to the Court of Appeal is not granted automatically. To bolster his position he cited the case of **British Broadcasting Corporation v Eric Sikujua Ng'amaryo**, Civil Application No. 138 of 2004. The learned counsel for the respondent argued that the applicant has cited the case of **Mambele Mtumwa Shamte** (supra) but the same was not attached.

Mr. Kisyeri argued that all grounds are frivolous, vexatious, and useless. he argued that the issue of whether the purchaser qualified to become *bonafide* purchaser is not worth being determined by the Court of Appeal since the said issue was addressed and determined by this court and the Honourable Judge concluded that the applicants being purchasers of the suit land did not conduct due diligence as required by the law.

The learned counsel for the respondent continued to submit that on the issue of ownership, the Hon. Judge confirmed that there is no dispute that the suit land was originally owned by the respondent's father. He added that the argument that the seller was the owner of the suit land by merely living in the suit land was also cleared by this court. To support his submission he referred this court to pages 16 and 17 of the court decision. Mr. Kisyeri strongly opposed all issues; which were raised by the applicant.

In conclusion, the learned counsel for the applicant beckoned upon this court to dismiss the applicant's application with costs.

I have thoroughly considered the affidavits and submissions by the parties herein. The applicant and the learned counsel for the respondent have submitted in length on the merit of the case while this court is not in a position to go to the merit of the intended appeal. It is indeed a requirement of the law that leave is granted where the intended grounds of appeal raise issues of general importance or novel points of law or a prima facie or arguable appeal. as rightly submitted by the learned counsel for the respondent, the court cannot grant leave where the grounds of appeal are frivolous, vexatious or hypothetical. This position has been reiterated in various decisions. In the case of **Simon Kabaka Daniel v Mwita Marwa Nyang'anyi & 11 Others** [1989] TLR 64, it was stated:-

“In the application for leave 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.”

In the application under consideration, the applicant's affidavit particularly paragraph 4, the applicant has outlined the points of law to be determined by the Court of Appeal. On his side, the learned counsel has opposed the application and claimed that the applicant's grounds for leave to appeal are demerit. I have laboriously investigated the record including the affidavits and rival submissions of both parties. In my view, two points appear to be the point of law worthy to be considered by the Court of Appeal of Tanzania. I, therefore, approve two out of five points of law registered by the applicant as attracting the attention of the Court of Appeal of Tanzania. For the sake of clarity, I now paraphrase and certify them as follows:-

(a) Whether the purchaser qualifies to become bonafide purchaser.

(b) Whether the court can draw an inference in a situation where the witness's whereabouts is unknown.

In consequence, this application succeeds. The applicant is granted leave to appeal to the Court of Appeal of Tanzania. No orders to costs.

Order accordingly.

Dated at Dar es Salaam this date 12th July, 2022.




A.Z.MGEYEKWA

JUDGE

12.07.2022

Ruling delivered on 12th July, 2022 in the presence of Ms. Pendo Ulomi,
learned counsel for the applicants and the respondent.




A.Z.MGEYEKWA

JUDGE

12.07.2022