

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

MISC. LAND CASE APPLICATION NO.568 OF 2021

{Arising from Land Appeal No. 98 of 2020 dated 20 / 09 / 2020, by Hon. A.Z.

MGEYEKWA, J.)

VERDIANA SAMWEL MUSHEMAAPPLICANT

VERSUS

VERONICA KIMEME.....1ST RESPONDENT

ROBIN KIMEME.....2ND RESPONDENT

MATILDA KIMEME.....3RD RESPONDENT

RULING

Date of Last Order: 11.05.2022

Date of Ruling: 06. 07.2022

B.S. MASOUD, J;

The applicant is seeking leave to appeal to the Court of Appeal of Tanzania, against the whole decision of this court, given by Mgeyekwa, J. in Land Appeal No. 98 of 2020. The case has its roots from Land Application No. 97 of 2012, heard at the District Land and Housing Tribunal for Ilala. The application was made under section 47(2) of the

Land Disputes Courts Act, Cap 216 R.E 2019 (hereinafter the **Act**). The same was accompanied by the affidavit of the applicant, Verediana Samweli Mushema. By order of the court, the application proceeded by way of filing written submissions, and the parties adhered to the submission schedule.

At the hearing, both parties appeared in person and unrepresented, although the Applicant enjoyed the service of Legal and Human Right centre in so far as drawing court documents is concerned.

Arguing for the application, the applicant submitted that there is appoint of law in issue and of serious legal problem worth the consideration by the Court of Appeal, the said issue is "*whether a certificate of occupancy or caveat filed in court as exhibits establishes Territorial Jurisdiction of the court*"

The Applicant submitted further that the territorial jurisdiction of the court is creature of the law and not determined by looking into exhibits of ownership tendered in the court, that the exhibits do not automatically give the court territorial jurisdiction.

When replying the Respondents resisted the application on the reasons that the affidavit in support of the Application does not suggest

existence of any point of law to be determined by the Court of Appeal. That what is stated under paragraph 6 the Applicant's affidavit is a vague statement that there is a point of law and serious legal problem, without mentioning it.


I have considered the arguments of the applicant as well as the affidavit, supplementary affidavit and respondents' counter affidavit. The question for determination is whether the application has merit or not.

I have been persuaded by the findings of my learned sister Hon. Maghimbi, J, in the case of **David Naburi as the Administrator of the estate of the late Maeda Naburi Vs Stephen Sangu, Misc. Land Application No. 960 of 2017, High Court of Tanzania, Land Division, Dar Es Salaam, unreported**, in which she stated that an application for leave to appeal to the Court of Appeal will be allowed upon the following considerations; (i) the court ought to consider the rights of parties against whom the decision of court which the intended appeal is sought, (ii) satisfy itself whether the said decision is an appealable one and (iii) there must be valid grounds as opposed to chance of success upon which the party wishes to appeal.

In my opinion, the applicant has met all these three requirements. Firstly, the impugned judgment of Hon. Mgeyekwa, J. in the Land Appeal Case No 98 of 2020 is appealable, and therefore the applicant needs to be given another forum to argue her case. This is her constitutional right of which the court cannot curtail. Above all, the applicant has valid reasons for her intended appeal: Therefore, it is just for her to refer her case to the appellate forum for the same reasons as stated in her submission.

In the upshot and for reasons stated herein above, I find merits in the application at hand. Thus, the leave is hereby granted without costs. It is so ordered.

Dated and delivered at Dar es Salaam this 6th day of July 2022.



B. S. Masoud

Judge

