

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

MISC. LAND APPLICATION NO. 628 OF 2021

(Originating from Misc. Land Application No. 70 of 2021, by Hon. V. L. Makani, J.)

MASUMBUKO RASHID LYESELO.....APPLICANT
VERSUS

MGOMI KESSY KONGWA.....1ST RESPONDENT
JUMANNE SULTAN KIHAMBWE.....2ND RESPONDENT
KAM COMMERCIAL SERVICES.....3RD RESPONDENT
MOHAMED KAISI.....4TH RESPONDENT

R U L I N G

Date of Last Order: 19.07.2022

Date of Ruling: 29. 07.2022

T. N. MWENEGOHA, J.

The applicant is seeking for a leave to appeal to the Court of Appeal of Tanzania, against the whole decision of this court, given by V.L Makani J vide Land Appeal No. 70 of 2021, by Hon. V. L. Makani, J. dated 11th October, 2021. The application was made under section 5 of the Appellate Jurisdiction Act, Cap 141 R. E. 2019 accompanied by the affidavit of the applicant himself, Masumbuko Rashid Lyelo. The same was heard by way of written submissions, Yuaja E. Balankiliza, learned counsel appeared for the applicant while Advocate Nickson Ludovick appeared for the 1st respondent. The 2nd and 4th respondents appeared in person. The 3rd respondent didn't file her written submissions.

In his submissions, Mr. Balankiliza insisted there are illegalities on the face of records in the decision of Hon. Makani J. The same need the attention of the Court of Appeal of Tanzania hence this court should allow the application in order to give the applicant another forum for his course to be looked upon.

In reply, Mr. Nickson for the 1st respondent was of the view that the instant application is devoid of merits and has to be dismissed. That the grounds of appeal raised by the applicant are baseless and do not need the attention of the Court of Appeal of Tanzania.

As for the 2nd and 4th respondents, both supported the application. They insisted in the written submissions filed separately that, the applicant deserves another platform to be heard, hence the court should allow the application at hand for the interest of justice.

In his rejoinder, the applicant's counsel reiterated his submissions in chief. I have considered the arguments of the applicant as well as the affidavit in support of the application. The question for determination is whether the application has merit or not.

On my part, I find this application to have merit and worth of being allowed due to the following reasons. Firstly, the applicant has provided his grounds of the intended appeal. Looking on the said ground, I find them to have constituted an arguable appeal worth of the attention of the court of Appeal of Tanzania, see **LTA Construction (Tanzania) Limited & 3 Others vs. Resolute (Tanzania) Limited, Misc. Commercial Application No. 224 of 2017, High Court of Tanzania, Commercial Division at Dar es Salaam, (unreported).**

Secondly, the impugned decision by Makani J is appealable, hence there is no need to deny the applicant his chance to challenge the same. Lastly, the respondents' rights will not be prejudiced in anyway by the existence of the said appeal. After all, majority of them have supported the application save for the 1st respondent.

In the end, the leave is hereby granted without costs.

It is so ordered.



T. N. MWENEGOHA

JUDGE

29/07/2022