

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 300 OF 2022

*(Arising from Misc. Land Application No. 527 of 2021 and Land Application
No. 11 of 2005 of the District Land and Housing Tribunal)*

SALUM MIGANDU APPLICANT

VERSUS

ZAITUNI LIPIKA RESPONDENT

RULING

Date of the last order 26.07.2022

Date of Ruling 29.07.2022

A.Z.MGEYEKWA

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 this Court (Hon. Ngwembe, J) in Misc.

Application No. 527. The application was made under section 47 (2) of the Land Disputes Courts Act, Cap 216 [R.E. 2019]. The application is supported by an affidavit deponed by Mr. Augustino Kusalika, learned counsel for the applicant.

When the matter was called for hearing on 26th July, 2022, the applicant was represented by Mr. Augustino Kusalika, learned counsel whereas the respondent did not show appearance. It was proved on 26th July, 2022 that the respondent was duly served to appear in court through the court process server. Hence, this court granted the applicant's counsel to proceed *exparte* against the respondent.

Mr. Kusalika had not much to submit. He stated that the applicant has filed the instant application for leave to appeal to the Court of Appeal in respect of Misc. Land Application No. 527 of 2021. The learned counsel for the applicant submitted that there are arguable grounds of law to be determined by the Court of Appeal on whether the issue of ownership of the suit property was correctly determined.

In his conclusion, the learned counsel for the applicant beckoned upon this court to grant the applicant's application to allow the intervention of the Court of Appeal.

I have heard the applicant's counsel submission and the issue for determination is whether there are points of law that attracts the attention of the Court of Appeal of Tanzania to determine his 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. It is worth noting that 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:-

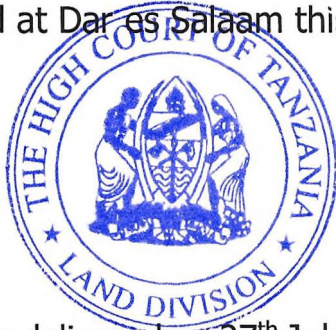
"In the application for leave to the Court of Appeal, the application must demonstrate that there is a point of law involved for the attention of the Court of Appeal."

I have laboriously investigated the record including the affidavits and rival submissions of the learned counsel for the applicant. In the application under consideration, the applicant's affidavit particularly paragraph 5 has outlined the point of law to be determined by the Court of Appeal. In my view, the point of law is worthy to be considered by the Court of Appeal of Tanzania.

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 27th July, 2022.

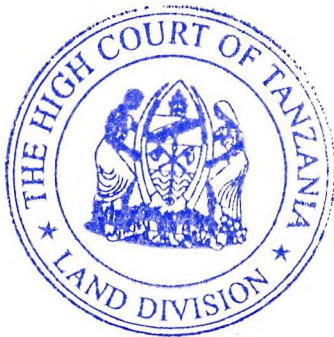



A.Z.MGEYEKWA

JUDGE

27.07.2022

Ruling delivered on 27th July, 2022 in the presence of Mr. Kusalika, learned counsel for the applicant.




A.Z.MGEYEKWA

JUDGE

27.07.2022