

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 152 OF 2021

(Arising from Judgment and Decree of the High Court of Tanzania in Land Appeal No. 49 of 2019 before Hon. Opiyo, J)

SHABANI IDD MWASA (as administrator of
estate of the late Masozi Duduma) **APPLICANT**

VERSUS

MOHAMED MSHAURI KIOGOMO **RESPONDENT**

RULING

Date of last Order: 25.02.2022

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A.Z. MGEYEKWA, J

In this application, the Court is moved to exercise its discretion and grant leave to the applicant to appeal to the Court of Appeal of Tanzania against the Judgment and order of this court dated 1st March, 2021. Iddi

Mwasa was the one who lodged this application before this court. When the matter was yet to be heard Iddi Mwasa passed away. The matter was adjourned for several months awaiting the appointment of the administrator of the estate of the late Masozi Duduma. On.... Shabani Iddi Mwasa was appointed to administer the estate of the late Msozi Duduma. By court order, the applicant filed an amended Chamber Summons which is preferred under section 47 (2) of the Land Dispute Court Act, Cap. 216 [R.E. 2019].

The application is supported by an amended affidavit deposed by Shabani Iddi Mwasa, the applicant. The application encountered formidable opposition from the respondent through a counter-affidavit sworn by Mr. Mohamed Mshauri Kiogomo, the respondent.

When the matter came up for hearing on 28th February, 2021, the applicant enjoyed the legal service of Mr. Cleopas Manyangu, learned counsel and the respondent appeared in person unrepresented.

In his submission, Mr. Manyangu urged this court to adopt the amended Chamber Summons and an amended affidavit of Shabani Iddi, the administrator of the estate of the late Masozi Duduma to form part of his submission. The learned counsel for the applicant submitted that the

applicant wants to challenge the decision of this court in Land Appeal No. 49 of 2019 dated 1st March, 2021 which was delivered by Hon. Opiyo, J.

The learned counsel for the applicant submitted that after the delivery of the judgment on 25th March, 2021, the applicant lodged a Notice of Appeal and on 23rd March, 2021, he requested copies of the judgment. He added that they filed the instant application within 14 days after the delivery of the judgment. It was his view that the applicant has fulfilled all the requirements of filing leave within time. Fortifying his submission he referred this court to the case of **Yahaya Rajabu v Ibrahim Salum Taffif & Ahmed Salum Taffif**, Misc. Land Application No.4 of 2009.

Mr. Manyangu continued to submit that the applicant in paragraph 7 of his affidavit has stated the points of law that attract the attention of the Court of Appeal of Tanzania. Averring that the prospective appeal stands an overwhelming chance of success. He listed four points of law to be determined by the Court of Appeal of Tanzania; whether it was proper for the appellate court to consolidate the grounds of appeal and ended up not addressing some of the grounds. The second point of law; is that the trial tribunal and this court erred in law and facts when it did wrongly find

and conclude that the disputed land was left as a bush since 1970 and the same was deserted for a long time.

On the third point of law; the applicant claims that the appellate court grossly erred in law and facts in holding that the applicant failed to prove the ownership of the disputed land and last point of law; whether the decisions of the trial tribunal and this court were proper in law while the trial tribunal failed to record the names of assessors, opinion of the assessors in judgment and their opinion were not read to parties.

On the strength of the above submission, Mr. Manyangu beckoned upon this court to grant the applicant leave to appeal and address his grievance at the Court of Appeal of Tanzania.

The respondent in his sworn deposition, the applicant took time to argue on the application. Then he ended up opposing the application and urged this court to adopt his counter-affidavit to form part of his submission.

From these rival submissions of the learned counsel for the applicant and the respondent, this Court is called upon to pronounce itself on *whether there is a contentious issue of law that attracts the attention of the Court of Appeal of Tanzania*. It is trite law that leave can be granted by this court if the applicant shows that there are legal and factual issues

for determination by the Court of Appeal of Tanzania on that basis he cited the case of **Said Ramadhani Muyanga v Abdallah Saleh** [1996] TLR 75 where it was held that for leave to be granted there must be a contentious issue of law. It is trite law that leave to appeal to the Court of Appeal is granted if prima facie grounds are meriting the attention of the Court of Appeal as it was held in the case of **Sango Bay v Dresdner Bank A.G** [1971] EA 17, it was held that:-

*"Leave to appeal will be granted where **prima facie** it appears that there are grounds which merit serious judicial attention and determination by a superior Court."*

Similarly, in the case of **Gaudensia Mzungu v IDM Mzumbe**, Civil Application No. 94 of 1994 (unreported), the Court of Appeal of Tanzania held that leave will be granted if, prima facie there are grounds meriting the attention and decision of the Court of Appeal. Accordingly, the case referred to me must be looked at its context rather than authority against the success of the intended appeal. Howbeit, my reading of the decision reveals that this Court came to a conclusion after noting that the suit land was included or listed as matrimonial property. In the case of **Grupp vs. Jangwani Sea Breeze Lodge Ltd**, Commercial case No.93 of 2002

(unreported) my brother Massati, J (as he then was) expressed the matter this way:-

"... I have no jurisdiction to go into merits or deficiencies of the judgment or orders of my sister judge in this application. All that I am required to determine is whether there are arguable issues fit for the consideration of the Court of Appeal...."

Having unflinchingly reviewed the depositions in the amended affidavit sworn on 16th February, 2022, specifically on paragraphs 7 the applicant averred that there are three points of law that attracts the attention of the Court of Appeal of Tanzania to determine the impugned decision of this court. After going through the points of law stated in paragraph 7 of the applicant's affidavit, I have noted that the following points of law are propriety before the Court of Appeal of Tanzania; whether it was proper for this court not to address all grounds of appeal and the and whether the decisions of the trial tribunal and this court were proper in law while the trial tribunal failed to record the names of assessors, opinion of the assessors in judgment and their opinion were not read to parties

Moreover, I have considered the oral account made by the applicant's counsel in support of the application. Thus, I am convinced that this case fits in the mould of cases for which there is a triable issue that attracts

the attention of the Court of Appeal of Tanzania. Circumstances of this case reveal sufficient reasons capable of exercising the Court's discretion and grant leave to appeal to 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 without costs.

Order accordingly.

Dated at Dar es Salaam on this 25th February, 2022.




A.Z.MGEYEKWA

JUDGE

25.02.2022

Ruling delivered on 25th February, 2022 in the presence of Mr. Manyangu, learned counsel for the applicant and the respondent.


A.Z.MGEYEKWA

JUDGE

25.02.2022

