

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 743 OF 2021

(Arising from the Judgment and decree of the High Court of Tanzania (Land Division) at Dar es Salaam in Land Appeal No. 51 of 2021 dated 22nd November 2021 Hon. A. Z. Mgeyekwa, J.)

MAKOKO RASHID MAMBOLEO (administrator of the estates of
the late **TABU PAZI MWINYIMVUA**.....**APPLICANT**

VERSUS

ABDULLAH MOHAMED HOZA

MAJIDI MUSUYA

INNOCENT JASTIN

ROBERT D. MASUNGA

CASSTAN C. MAHUNDI

EMMANUEL S. RUTAMBUKA

JAMIRA S. DEBWE

REHEMA M. MTORO

FRANK KIPILIPILI

SEGUMBA ALLY

ALLY HAMEDU KAMENYA

GETRUDA BENEDICTO MLINGA

TUKAE RAJABU MZINDU.....**2ND RESPONDENT**

.....**1ST RESPONDENTS**

Alls.

01/8/2022 & 11/8/2022

RULING

A. MSAFIRI, J.

On 22nd day of December 2021, the above named applicant lodged the present application, by chamber summons under Section 47(2) of the Land Disputes Courts Act [CAP 216 R.E 2019] and Section 5(1) (c) of the Appellate Jurisdiction Act, [CAP 141 R.E 2019], seeking for the following reliefs namely;

- i. That this Honourable Court may be pleased to grant the applicant leave to appeal in the Court of Appeal of Tanzania against the judgment of the High Court of Tanzania (Land Division) in Land Appeal No. 51 of 2021 dated 22/11/2021 by A. Z. Mgeyekwa, J.*
- ii. Costs of this application follow the event.*
- iii. Any other further relief(s) that this Honourable Court may deem fit, just and equitable to grant.*

The application is supported by an affidavit affirmed by the applicant herein.

It is on record that the respondents through the services of Mr. Kuboja learned advocate, raised a preliminary objection on the competency

Alle

of the present application contending that it was preferred under wrong enabling provisions of the law. On 21/6/2022 this Court ordered the said objection together with the application on merits be disposed simultaneously by written submissions.

But on 24th June 2022, the respondents lodged a notice in Court to withdraw the said objection. Hence the preliminary objection raised by the respondents is hereby marked withdrawn.

The applicant appeared in person, in his written submissions, having adopted the affidavit in support of the application contended that the application has disclosed sufficient reasons which warrant this Court to grant him leave to appeal to the Court of Appeal of Tanzania. According to the applicant, this Court failed to take into consideration that the trial Chairman did not at all deal, examine, evaluate and analyze the evidence on record.

The applicant contended that he intends to invite the Court of Appeal to answer the issue of whether the trial Tribunal was correct to determine and deliver judgment against the applicant without evaluating and analyzing the evidence on record.

Alls -

On reply, the respondents contended that the applicant has failed to advance sufficient reasons to warrant the court to grant the applicant leave to appeal to the Court of Appeal. According to the respondents leave of appeal is grantable only where there are prima facie grounds. To fortify their stance, the respondents have cited several decisions such as **Sango Bay v Dresdner Bank AG [1971 EA 17, Hamis Mgida & another v The Registered Trustee of Islamic Foundation, Civil Appeal No. 323 of 2018, British Broadcasting Corporation v Eric Sikujua Ng'maryo Civil Application No. 138 of 2004 (both unreported).**

The respondents have submitted that, grounds for determination by the Court in the intended appeal raised by the applicant are frivolous and vexatious. The respondents have submitted faulting on each ground listed under paragraph 6 of the affidavit in support of the application contending that they were dealt with by this Court in determining the appeal before it. Hence the respondents pray for the application to be dismissed with costs.

The applicant did not file any rejoinder. *Alls*

Having gone through submissions of the parties rival and in support of the application, the sole issue that calls for the court's determination is whether the application has merits.

As correctly submitted by the respondents, for application for leave like the present one, there are conditions to be considered upon which leave to appeal is grantable. The decision of the Court of Appeal in the case of **British Broadcasting Corporation v Erick Sikujua Ng'maryo** [supra] cited to me by the respondents, the Court stated that;


*Needless to say, leave to appeal is not automatic. It is within the discretion of the court to grant or refuse leave. The discretion must however judiciously exercised and on the materials before the court. As a matter of general principle, leave to appeal will be granted where the grounds of appeal raise issues of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal (see: **Buckle v Holmes (1926)** ALL E. R. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical no leave will be granted.* Alle.

From the foregoing quoted decisions, it is imperative to note that the grant of leave to appeal is not automatic but conditional in that it can only be granted where the grounds of the intended appeal raise arguable issues in the appeal before the Court.

The respondents have strongly submitted that the grounds listed on paragraph 6 of the applicant's affidavit are frivolous and vexatious. The respondents have submitted at length on each ground raised by the applicant contending that they were sufficiently dealt with by this Court.

However, with due respect to the learned advocate for the respondents, my duty in this application is not to determine the merits or demerits of the points raised when seeking leave to appeal. Instead a Court has only to consider whether the proposed issues are embraced in conditions set out in the authorities referred above.

This position was underscored In the case of **The Regional Manager-TANROADS Lindi v DB Shapriya and Company Ltd**, Civil Application No. 29 of 2012 CAT (unreported), it was held;

It is now settled that a Court hearing an application should restrain from considering substantive issues that 

are to be dealt with by the appellate Court. This is so in order to avoid making decisions on substantive issues before the appeal itself is heard.

I have gone through the applicant's affidavit in support of the application. On paragraph 6 of the affidavit the applicant has listed grounds which he intends the Court of Appeal to address them. I am of the settled mind that basing on grounds raised on paragraph 6 of the affidavit the application has disclosed points of law worthy of consideration by the Court of Appeal, whether the said grounds are vexatious or frivolous as submitted by the respondents, it is a matter to be determined by the Court of Appeal.

Consequently leave is hereby granted to the applicant to appeal to the Court of Appeal as prayed. I will make no order as to costs as the application has been preferred under legal aid.

It is so ordered.



A handwritten signature in blue ink, appearing to read "A. Msafiri", written over a horizontal dotted line.

A. MSAFIRI

JUDGE

11/8/2022