

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

MISC. LAND APPLICATION NO. 731 OF 2021

(From Misc. Land Application No. 179 of 2021)

ANNA P. MTEI (as Administrator of the estate of the late

ALFRED P. MTEI **APPLICANT**

VERSUS

JULIUS W. MMBANDO

JOSEPH W. MMBANDO

MARTIN W. MMBAMDO

TINA W. MMBANDO

..... **RESPONDENTS**

RULING

Date of Last Order: 28/7/2022

Date of Ruling: 05/8/2022

A. MSAFIRI, J

The applicant has lodged the present application by chamber summons under Section 5(1) of the Appellate Jurisdiction Act and Rule 45(a) of the Court of Appeal Rules 2009 as amended by the Tanzania Court of Appeal (Amendment) Rules 2009, seeking for the following reliefs namely;

1. This Honourable Court be pleased to grant leave to the Applicant to appeal to the Court of Appeal against the Ruling and Order dated 9th day of November, 2021 by Hon. B.S. Masoud, J.

2. Costs be granted.

3. Any other reliefs this Honourable Court may deem fit and or just to grant.

The application was supported by an affidavit of Mohamed I.A Mkali. The respondents were represented by Ms. Happiness Mbiduka, learned advocate who informed the Court that the respondents do not contest the application, hence they did not file counter affidavit. She stated further that, the application be granted as prayed.

Since the application was not contested, the applicant was called to address the Court on the prayers sought. Mr. Mohamed Mkali represented the applicant and started his submissions by praying to make corrections on the clerical errors on enabling provisions on the chamber application. He said that, the current citation of the enabling provision is read as section 5(1) (a) of the Appellate Jurisdiction Act. He prayed for the correct version to read as section 5(1) (c) of the same Act.

The advocate for the respondents had no objection and the Court granted the prayers and ordered that the correction be made by hand for the provision to read as section 5(1)(c) of the Appellate Jurisdiction Act.

Mr. Mkali submitted further that, the supporting affidavit shows the reasons/grounds sufficient for this Court to allow the application. He said that, the core issue which is the base of the application is that the Court

erred when it dismissed the application for restoration of the appeal. He prayed to adopt the contents of the affidavit and that the Court be pleased to grant the application.

On the prayers of the correction of clerical errors on the enabling provision which was not objected by the respondents, the Court hereby grant the same and orders the amendment by hand on the enabling provision to read as Section 5(1) (c) of the Appellate Jurisdiction Act.

As stated, the applicant is seeking leave of this Court to lodge an appeal to the Court of Appeal. According to the contents of the affidavit, the applicant filed an Application seeking to set aside dismissal order by this Court in Misc. Land Application No. 605 of 2020. However, this Court dismissed the said Application for the reason that it was filed out of time.

In application for leave to file an appeal to the Court of appeal, there are conditions upon which leave to appeal is grantable. The grant of leave 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. (see the case of **British Broadcasting Corporation vs. Erick Sikujua Ng'maryo**, Civil Application No. 138 of 2004 (unreported)).

In the application for the leave to appeal, the applicant is only required to show in his affidavit the arguable grounds for determination by the Court of

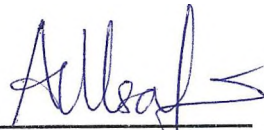
Appeal, which is the case in the present matter. The applicant has successfully shown grounds worthy of consideration by the Court of Appeal.

At paragraph 7 of the affidavit it shows that;

"there is a legal issue which need be determined by the Court of Appeal in as to whether it was right for the High Court to dismiss the application filed out of time instead of striking it out inter alia."

I am satisfied that this ground is sufficient and worthy to be considered before the superior Court.

For the foregoing reason, I find that the application has merit and I allow it. The applicant is hereby granted leave to appeal to the Court of Appeal. Costs shall follow the events.



A. MSAFIRI,

JUDGE

05/08/2022

