

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

MISC. LAND CASE APPLICATION NO.837 OF 2022

(Originating from Land Appeal No. 37 of 2022, by Msafiri J)

**JABIR MOHAMED MNYONES (as Next friend of Nassoro Jabir
and Jabir Jabir Mnyones)APPLICANT**

VERSUS

REHEMA N. PAZI.....RESPONDENT

RULING

Date of Last Order: 15.02.2023

Date of Ruling: 29.03.2023

T.N. MWENEGOHA, J

This is a ruling on an Application for Leave to Appeal to the Court of Appeal of Tanzania in respect to Land Appeal No. 37 of 2022 before her ladyship and my sister Hon. A. Msafiri, J delivered on 14th day of December, 2022.

The application is brought in under section 5(1) (c) of Appellate Jurisdiction Act, Cap 141 R.E 2019 and rule 45 and 47 of the Court of Appeal Rules of 2009. Also, it goes along with the affirmed affidavit of the applicant himself one Jabir Mohamed Mnyones.

The application was directed to be disposed of by way of written submissions thereat. Seasoned advocate Prof. Abdallah Safari, appeared for the applicant while the respondent enjoyed the legal services of Advocate Buberwa Abdul.

Submitting in support of the application, Prof. Safari detailed that, the issues of law which requires the attention of the Court of Appeal of Tanzania is the fact that, the impugned decision of Hon. Msafiri J contains illegality apparently on the face of records. That, it was held by her in the said decision that the tenancy claims on the part of the applicant be filed at Magomeni Primary Court while in real sense the said Court has no jurisdiction on land matters. He stressed that, the grounds for this application are given under paragraphs 2,3,4,5 and 6 of the affidavit hereof. He further stated that, as to the impugned decision, it is on record that the trial appellate Judge was directing execution of her Judgment before Magomeni Primary Court while the matter at hand was not seeking execution of any decree.

In retort, thereto, Mr. Buberwa Abdul for the respondent contended that, the applicant's submissions have not sufficed to establish any point of law worth of the determination by the Court of Appeal of Tanzania. He averred that, there is no legal basis for this application to be allowed. The same

does not meet the criteria for leave. He asserted that, the case of **Mtumwa Said Banjahanuni versus Abdallah Kwayu**, Civil Appeal No. 99 of 2019 is distinguishable under the circumstances. He added that, leave to appeal is not an automatic right as it is within the discretion of the Court to grant or refuse based on the facts given by the applicant as stated in the decision of **British Broadcasting Corporation versus Sikujua Ngimiry**, Civil Application No. 138 of 2004, Court of Appeal of Tanzania (unreported). He therefore, urged this Court to refuse granting the application.

I have considered the parties' submissions for and against the application *vis-à-vis* the affidavit and counter affidavit respectively. I have noted that they all revolve on basically one issue that is, whether the application demonstrates sufficient grounds that requires the attention of the Court of Appeal of the United Republic of Tanzania for leave sought to be granted.

Among others, leave to appeal to the Court of Appeal of Tanzania in matters concerning land is governed under section 47 (2) of the Land Disputes Courts Act [Cap 216 R.E 2019]. To that, leave is only granted where the intended appeal raises a novel point of law or where there is an arguable appeal.

In the landmark case of **Harban Haji Mosi & Another vs. Omar Hilal Seif & Another**, Civil Reference No. 19 of 1999 (Unreported) held that:

"Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceedings as a whole reveal such disturbing features as to require the guidance of the Court of Appeal of Tanzania. The purpose of provision is therefore to spare the Court the specter of unmeriting matters and to enable it to give adequate attention to cases of true public importance".

Emphasis supplied.

Unfortunately, the applicant did not list or mention the grounds upon which the intended appeal lies. On such circumstances, therefore, I will dwell in the paramount considerations stated in the decision of **David Naburi (as the Administrator of the estate of the late Maeda Naburi) versus Stephen Sangu**, Misc. Land Application No. 960 of 2017, High Court of Tanzania, Land Division, Dar Es Salaam, (unreported), that: -

(1) the rights of parties against the decision of Court which the intended appeal is sought, (2) the same decision should be an appealable and (3) there must be valid grounds as

opposed to chance of success that the party wishes to appeal.

In my firm view, the applicant has met all these three criteria in the circumstances as the Judgment and Decree of this Court [Hon. A. Msafiri, J] vide Land Appeal No.37 of 2022, is appealable; consequently, the parties need to be given another forum to argue their case for the interest of justice. And this forum is none than the Court of Appeal of Tanzania. Above all, the right of appeal being one of the constitutional rights, this Court cannot deny the applicant his right upon fulfilling the requisite of leave as required by the law.

It is on the reasons explained here in above, that, the leave to appeal to the Court of Appeal of Tanzania is hereby granted with no order as to costs.

Order accordingly.




T.N MWENEGOHA

JUDGE

29/03/2023