

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. APPLIATION NO. 84 OF 2023**

SESARIA LEBULU MUSHI APPLICANT

VERSUS

HELLEN BENJAMINI MOSHI RESPONDENT

RULING

Date of Last Order: 27/3/2023 & 20/4/2023

A. MSAFIRI, J.

The applicant lodged this application on 24/2/2023, under Section 47(2) of Land Disputes Courts Act, Cap 216 R.E 2019, Section 5(1) (c) of the Appellate Jurisdiction Act, Cap 141 R. E 2019, and Rules 45(a) and 47 of the Court of Appeal Rules 2009 as amended. He seeking for the following orders namely;

- i. That, this Honorable Court may be pleased to grant the applicant leave to appeal to the Court of Appeal of Tanzania against the decision of the High Court of Tanzania, Dar es Salaam, land Division in Appeal No. 243 of 2021 before A. S Kagomba,J.
- ii. Costs of this Application be provided for *Adelle*.

- iii. Any other relief(s) this Honorable Court may deem just and fit to grant.

The application has been taken at the instance of the applicant and is supported by an affidavit sworn by the applicant Sesalia Lebulu Mushi and it was opposed by the respondent who filed her counter affidavit on 24/3/2023.

The application was heard by way of written submissions and the parties complied with the schedule order by the Court. Both parties were unrepresented and hence they drew and filed their written submissions by themselves.

According to her affidavit, the applicant was the appellant in Land Appeal No. 243 of 2021 before this Court after she was aggrieved by the Judgment and Decree of the District Land and Housing Tribunal of Kinondoni at Mwananyamala. In the said appeal this Court decided in favour of the respondent Hellen Benjamin Moshi. Again, the applicant was aggrieved and sought to challenge the decision of this Court by Hon. Kagomba, J by appealing to the Court of Appeal.

Acts.

However, the applicant was out of time so she sought for extension of time to lodge the leave to appeal to the Court of Appeal, through Misc. Land Application No. 622 of 2022 which was granted by this Court (Hon. Mhina, J) and 21 days was granted upon which to file the application for leave to appeal. Following that, the applicant has filed the current application.

In an application for leave to appeal, like the current one, there are conditions to be considered upon which leave to appeal can be granted. Such conditions were expounded in the decision of the Court of Appeal in the case of **British Broadcasting Corporation vs. Erick Sikujua Ng'maryo**, Civil Application No. 138 of 2004 (Unreported). It was 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 vs. Holmes (1926) ALL E. R. 90 at page 91**). However,*

Alls -

where the grounds of appeal are frivolous, vexatious or useless or hypothetical no leave will be granted.”(emphasis added).

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

Furthermore, the duty of this Court in the application at hand is not to determine the merits or demerits of the grounds of appeal raised when seeking leave to appeal. Instead a Court had only to consider whether the proposed issues are embraced in the conditions set out in **British Broadcasting Corporation’s case (supra)**.

Hence, the applicant in her affidavit is required to show the arguable grounds for determination by the Court of Appeal.

At paragraph 7 of her affidavit, the applicant has shown the points of law which she believes are serious points of law to be determined in the intended appeal. The said points of law are that;


Acts.

- i. Whether it was right on the part of Hon. Judge after finding that the judgment of District Tribunal is not in conformity with the law, was right not to remit the file to the trial Tribunal.
- ii. Whether it was right for the Hon. Judge to dismiss the appeal without solving the issue of order and decree which was extracted on the same judgment of the District Tribunal.
- iii. Whether it was right for the Hon. Judge to dismiss the appeal after finding that the Hon. Chairman of Tribunal did not make any decision.

As said earlier, this Court's duty is only to consider whether the purported points of law advanced raises an arguable issues in the intended appeal.

Having read the grounds raised at paragraph 7 of the applicant's affidavit, I am satisfied that they are arguable points of law. Consequently, I find the application to have merit and I accordingly grant it. The applicant shall have to file the intended appeal within the required time as per the law. Costs shall follow events in the intended appeal.

Order accordingly.



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A. MSAFIRI
JUDGE
20/4/2023

