

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND CASE APPLICATION NO. 708 OF 2022**

*(Arising from the decision of the High Court of Tanzania (Land Division) at Dar es salaam in Land Appeal No. 185 of 2020 dated 16<sup>th</sup> day of August, 2021 originating from Land Application No. 21 of 2014 before the District Land and Housing Tribunal for Ilala at Ilala)*

**THOMAS GILBERT OBILLA.....APPLICANT**

**VERSUS**

**PERPETUA BONIFACE CHILAI.....1<sup>ST</sup> RESPONDENT**

**ROBERT JOSEPH CHITI.....2<sup>ND</sup> RESPONDENT**

**PRISCA ISAYA KILWAI.....3<sup>RD</sup> RESPONDENT**

**RULING**

*28/02/2023 & 21/03/2023*

**L. HEMED, J.**

This is a ruling on application for leave to appeal to the Court of Appeal of Tanzania in respect to Land Appeal No. 185 of 2020. The application is supported by the affidavit deponed by the applicant himself and objected *vide* the joint counter affidavit of the 1<sup>st</sup> and 3<sup>rd</sup> respondents. The 2<sup>nd</sup> respondent did not file his counter affidavit and thus presumed to have conceded to the application.

By the Court order dated 06/02/2023, the application was argued by way of written submissions, where the parties filed their written submissions in compliance with the ordered schedule.

The applicant commenced by adopting the affidavit to form part of his submissions. He asserted that, the principle of law that guide this Court to grant leave was stated in the prominent case of **Jireys Nestory Mutalemwa vs. Ngorongoro Conservation Area Authority, Civil Application No. 154 of 2016.**

He stated that, the intended grounds of appeal are well indicated from paragraphs 12 to 18 of the applicant's affidavit. He further submitted that, at appellate level, the applicant raised a question of jurisdiction of the trial Court when determining the matter, yet, the appellate judge ignored the same with no reasons. It was stated by the applicant that, the question of jurisdiction of the Court raises a matter of utmost importance that needs to be addressed by the Court of Appeal of Tanzania when the leave to appeal is granted.

The counsel for the applicant concluded that, on the above grounds and all other grounds detailed in the affidavit, it is of a great importance for this Court to allow this application in order to provide a room for the applicant to pursue his appeal to the apex Court.

Objecting the application, the 1<sup>st</sup> and 3<sup>rd</sup> respondents beseeched that the joint counter affidavit be adopted and form part of their submissions. They submitted that, the applicant had a duty to prove that the suit land belonged to him.

They contended that, this application for leave to appeal to the Court of Appeal should not be granted nor entertained as the applicant has nothing to argue at the superior Court since in the trial Court and before the High Court, the applicant failed to prove his claims of ownership of the disputed land. They asserted that, the issue of jurisdiction itself cannot move the Court to grant the applicant the claim of ownership of the disputed land. They prayed that the application be dismissed with costs as the intended appeal has no chances of success.

Having gone through the written submissions for and against, the application and the affidavits in for and opposition thereof, 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.

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 prominent 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.*

The applicant's argument is based on the grounds deponed in paragraphs 12 to 18 of the affidavit which *inter alia* paragraph 14, so to speak, concerns jurisdiction which is a point of law and can be raised at any stage. More so, paragraph 18 again as enumerated in the affidavit in support of the application is on illegalities and irregularities issues which

constitutes an arguable case worth consideration by the Court of Appeal of the United Republic of Tanzania.

I deem it pertinent to borrow a leaf from the case of **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo**, Civil Application No. 138 of 2004, (Unreported), Hon. Nsekela, J.A (as he then was) at page 6 and 7 amplified that:

*"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.*

Likewise, in the case of **Fortunatus Lwanyantika Mosha vs. Icea Lion Insurance Co. Ltd & Another**, Misc. Civil Application No. 143 of 2020, (HCT-MWZ), (Unreported) it was stated that:


*"...This Court has no jurisdiction to go into merits or deficiencies of the impugned decision of this Court but only to determine whether there is arguable issue fit for consideration by the Court of Appeal".*

From the decisions cited herein above, the question whether or not the grounds are meritorious, is not the function of this Court as by

doing so will be stepping into the jurisdiction of the Court of Appeal of Tanzania. In other words, it will amount to assuming powers which I do not have.

In the upshot, leave is hereby granted to the applicant to file an appeal to the Court of Appeal of the United Republic of Tanzania. Each party to bear its own costs. It is so ordered.

Dated at Dar es Salaam this 21<sup>st</sup> March, 2023.



*L. Hemed*  
**L. HEMED**  
**JUDGE**

**Court:** Ruling delivered in the presence of Mr. Nyachia Mosese, advocate for the applicant and also holding brief of Mr. Richard Lukas, advocate for the respondent this 21<sup>st</sup> March, 2023.



*L. Hemed*  
**L. HEMED**  
**JUDGE**  
**21/03/2023**