

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

MISC. LAND CASE APPLICATION NO. 824 OF 2022
(Originating from Land Appeal No. 121 of 2022)

MILDRED KISAMO.....APPLICANT

VERSUS

**SOPHIA DAVID MANSUR (Personal Legal Representative of the late
DAVID MANSUR)RESPONDENT**

R U L I N G

Date of Last Order: 27.02.2023

Date of Ruling: 24.03.2023

T. N. MWENEGOHA, J.

The Applicant is seeking for a leave to Appeal to the Court of Appeal of Tanzania, against the whole decision of this Court, vide Land Appeal No. 121 of 2022, by Hon. A. Z. Mgeyekwa. The application was made under Section 5(1) (c) of the Appellate Jurisdiction Act, Cap 141 R. E. 2019 and Rule 45(a) of the Court of Appeal Rules of 2019. The same was accompanied by the affidavit of the applicant, Mildred Kisamo.

The application was argued by way of written submissions. Advocate Hassan S. Ruhanywa, appeared for the applicant while the respondent enjoyed the legal services of Advocate Anna Marealle.

In his submissions in support of the Application, Mr. Ruhanywa insisted that the applicant has arguable issues that need the attention of the Court of Appeal. He submitted and analysed the grounds upon which the intended appeal lies. He insisted that, since the grounds of the intended appeal raise issues of general importance, no doubt that Application has merits. He referred to the case of **Hamis Mdida & Another versus The Registered Trustees of Islamic Foundation, Civil Appeal No. 232 of 2018. Court of Appeal of Tanzania at Tabora(unreported)**.

In reply, Advocate Marealle was of the view that, the application is devoid of merits and the same should be dismissed. That, the same amounts to abuse of court process as the raised grounds of appeal do not constitute an arguable appeal.

In rejoinder, the applicant's counsel reiterated his submissions in chief.

I have considered the parties' submissions for and against the Application as well as the affidavit together with the counter affidavit of the parties. The issue for determination is whether this Application has merits or not. In my determination I will be guided by the decision of the Court of Appeal of Tanzania given in the case of **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo, Civil Application No. 138 of 2004 (unreported)** 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, be judiciously exercised 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. Rep. 90 at page*

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

Based on the decision above, there are four circumstances that may warrant an Application for a leave to appeal be allowed, namely; -

- (i) Where the grounds of appeal raise issues of general importance or
- (ii) where there is a novel point of law or
- (iii) where the grounds show *prima facie* or
- (iv) there is an arguable appeal.

On record, I have the submissions of the applicant where the grounds of his intended appeal have been outlined, they are 4 in total. In my settled opinion, those grounds have raised issues of general importance worth of determination by the Court of Appeal. Moreover, the grounds advanced by the applicant show *prima facie* case and further the applicant has convinced this Court that there is an arguable appeal. Therefore, the instant Application has met three out four requirements for it to be granted leave as stated in the case of **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo (Supra)**.

For the reasons above, I allow the instant Application. No order as to costs.

It is




T. N. MWENEGOHA

JUDGE

24/03/2023