

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION No. 642 OF 2023**

MOHAMED SALEH ABRI.....1ST APPLICANT

ABDALLAH SAID MGAZA.....2ND APPLICANT

VERSUS

FATUMA SHABANI SAID DOLOLO(Legal Representative of the late Shabani Said Dololo).....**1ST RESPONDENT**

FATUMA SALUMU SAID DOLOLO(Legal Representative of the late Salum Said Dololo).....**2ND RESPONDENT**

RULING

01/11/2023 & 21/11/2023

A. MSAFIRI, J

This is a ruling on the Application whereby the above named applicants are seeking for the Court orders that they be granted leave to appeal to the Court of Appeal of Tanzania having been aggrieved by the decision of this Court in Land Appeal No. 249 of 2023. The Application has been brought under Section 47(2) of the Land Disputes Courts Act, Cap 216, R.E. 2019.

The Application has been taken at the instance of M.B. Kabunga & Co. Advocates and is supported by the grounds as set out in the affidavits of Mohamed Saleh Abri and Abdallah Said Mgaza, the

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applicants, and is contested by the respondents who have jointly affirmed and filed their counter affidavit to that effect.

The Application was heard by way of written submissions and the submissions in chief and rejoinder by the applicants were drawn and filed by Mr Mathew Bernard Kabunga, learned advocate while the reply submission by the respondent was drawn gratis by Ms. Glory Sandewa, learned advocate from Tanzania Women Lawyers Association (TAWLA) and filed by the respondents in person.

Before dwelling on the pleadings and submissions by the parties to this Application, the brief background of the matter is apposite.

The respondents then applicants instituted a Land Application No.85 of 2021 before the District Land Tribunal of Temeke (herein trial Tribunal) against the now appellant who was then the respondents. They were challenging the sale of the suit property by the 1st respondent to the 2nd respondent. The applicants claimed that the suit property was a property of the family of the late Shaban Said Dololo and Salum Said Dololo which was administered by the applicants respectively. They prayed for the declaration that the sale of the suit property between the respondents was null and void. After hearing, the trial Tribunal granted the Application and declared the suit property to be a family property.

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The respondents were aggrieved and lodged Land Appeal No.249 of 2023 before this Court. After hearing, this Court dismissed the appeal and upheld the findings and decision of the trial Tribunal. The appellants are still not satisfied hence they intend to lodge further appeal to the Court of Appeal. The appellants have already filed their Notice of Intention to appeal but as per the law requirements, they have to seek leave of this Court to file their intended appeal before the superior Court.

In their submissions, Mr Kabunga for the applicants submitted on the issues which require the determination of the Court of Appeal. The issues are as they are found under paragraphs 8 of the two affidavits of the applicants. He insisted that those issues attract the attention of the Court of Appeal for the interest of justice. He prayed for the Application to be granted as prayed.

In their reply submissions, the respondents narrated the background of the matter which I have already briefly stated. They submitted that this Application by the applicants seeking for leave to appeal to the Court of Appeal is not justified because the applicants have failed to raise legal points which need determination of the Court of Appeal. They stated further that this is for the reason that it is a

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matter of fact that the disputed land is a family land and being the family land the 2nd respondent cannot transfer the same to the 1st applicant by way of sale as he is not the owner.

To bolster their points, the respondents cited various cases of including the case of **British Broadcasting Corporation vs. Erick Sikujua Ng'maryo**, Civil Application No. 133 of 2004 (Unreported).

They concluded by praying for dismissal of the Application in its entirety.

There was no rejoinder.

In an Application for leave like the present one, there are conditions to be considered before the leave to appeal can be granted. Such conditions were expounded in the decision of the Court of Appeal in **British Broadcasting Corporation vs. Erick Sikujua Ng'maryo (supra)**. In that case the Court of Appeal 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 be 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, where the grounds of appeal are frivolous, vexatious or useless or hypothetical no leave will be granted."*

Further, in the case of **Tanzania East Africa Limited vs. The Minister for Energy and Minerals**, Misc. Commercial Application No. 331 of 2015, this Court (Commercial Division) made observation as follows;

"leave to appeal in civil, criminal or other proceedings will only be granted by the High Court if satisfied that the case involves a substantial question of law as to the interpretation of the law and that the reasons advanced as a ground of appeal raises a question of general importance or novel points of law and of course not issues of facts or evidence."

From the foregoing quoted decisions, it is imperative to note that 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 or substantial issues which will be subject for determination in the intended appeal before the Court of Appeal.

Furthermore, the duty of this Court in this Application is not to determine the merits or demerits of the grounds of appeal raised when

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seeking leave to appeal. Instead the Court has only to consider whether the proposed issues are embraced in conditions set out in **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo [supra]**.

The issue therefore in the Application is whether the applicant has succeed to establish that there are substantive issues or novel points of law to be determined in the intended appeal.

The applicants are only required to show in their affidavits the arguable grounds for determination by the Court of Appeal, and as I have already pointed out, in the affidavits supporting the Application at paragraphs 8, the applicants have shown their issues as follows;

- a. That the Honourable Judge erred in law and fact for failure to observe that the disputed property was lawfully and properly sold to the 1st applicant by the 2nd applicant who is the lawful owner of that property.*
- b. That the Honourable Judge erred in law and fact for failure to observe that the disputed property does not form part of the estate of the late Shabani Said Dololo and the late Fatuma Salumu Said Dololo and it was lawfully sold to the 1st applicant.*
- c. That the Honourable Judge erred in law and fact for failure to observe that the decision of the District Land and Housing Tribunal was not based on the pleadings and the evidence brought before it by the parties regarding the ownership of the disputed property.*

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- d. That the Honourable Judge erred in law and fact for failure to observe that the Honourable Chairperson failed to observe the rules of natural justice.*
- e. That the Honourable Judge erred in law and fact for failure to observe that the case against the applicants was rejected without sufficient reasons.*
- f. That the Honourable Judge erred in law and fact for failure to assess the nature of the dispute for both parties.*

This Court's duty is only to consider whether the purported points of law advanced raises an arguable issue in the intended appeal. Having read the grounds raised at paragraphs 8 (a-e) of the applicants' affidavits, I can see only two issues which are substantive and worth to be tabled before the Court of Appeal.


The first issue is on ownership of the disputed property and whether it form or does not form part of the estate of the late Shabani Said Dololo and the late Salumu Said Dololo which they are being administered by the respondents.

The second issue is on whether the decision of the trial Tribunal was based on the pleadings and the evidence adduced by the parties before it regarding the ownership of the disputed properties. It is my findings that these two issues are important hence they are worth of determination before the Court of Appeal.

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Basing on those two grounds, I find the Application to have merit and I accordingly grant it. The applicants shall have to file their intended appeal within the required time as per the law. Costs shall follow events in the intended appeal.

Order accordingly.



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JUDGE
21/11/2023