

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 728 OF 2023

MILLIAN MAKELE APPLICANT

VERSUS

DIONIZ BARTHAZAR RUHINDUKA RESPONDENT

(Arising from the Judgment and Decree of the High Court (Hon. Madam Justice Mwenegoha, J.) delivered at Dar es Salaam on 29th September, 2019, in Land Appeal No. 217 of 2023)

RULING

27/11/2023 & 12/12/2023

A. MSAFIRI, J

This is an Application for leave to appeal to the Court of Appeal against the decision of this Court in Land Appeal No. 217 of 2023 which was delivered on 29/9/2023 before Hon. T. N. Mwenegoha, J., the decision overturned the decision of the District Land and Housing Tribunal for Kinondoni District at Mwananyamala (the District Tribunal) in Land Application No. 226 of 2009 which has decided in favor of the respondent. The applicant was aggrieved by the decision of this Court and he is intending to appeal to the Court of Appeal hence the current Application.

The Application was made under Section 47(2) of the Land Disputes Court Act, Cap 216 R.E. 2019 and section 5(1)(c) of The Appellate

Atts.

Jurisdiction Act Cap 141 [R.E. 2019]. It was supported by affidavit of Millian Makele, the applicant whereas, the respondent did not file the counter affidavit despite the fact that he was served with Application since 08/11/2023.

However, on 27/11/2023 when the matter came for hearing, Mr. Desdery Ndibalema learned Advocate appeared for the respondent, and asked for extension of time to file the counter affidavit, the prayer was denied, but he was granted the audience to proceed with the hearing on matters of law only. On the other hand, the applicant was represented by Mr. Michael Kabuzya learned counsel.

On his submission Mr. Kabuzya adopted the chamber summons and affidavit in support of his submissions. He stated that there is point of law that needs the attention of the court of appeal as narrated under paragraph 18(a)-(q) of the applicant's affidavit, including two issues that were left unaddressed, **one**, that the respondent in Land Appeal No. 217 of 2023 had filed his rejoinder out of time contrary to the court orders dated 03/08/2023, but that the High Court disregarded this issue in determining the said Appeal, **two**, that there was a dispute of pecuniary jurisdiction whether the value of the subject matter is TZS. 25,000,000/- or TZS. 1,007,000,000/- at the District Tribunal. On those grounds, the

Acts.

counsel for the applicant prayed that the Application be granted with costs.

On reply, Mr. Ndibalema learned counsel submitted that, there is no point of law that needs to be determined by the Court of Appeal, he stated that, what is stated under paragraph 18(a)-(q) of the applicant's affidavit are facts and not points of law. He added that the whole of the applicant's affidavit does not reveal the points of law to be determined by the Court of Appeal.

Hence, that the Applicant has not managed to substantiate any point of law and therefore the Application be dismissed with costs because the Judgment in Land Appeal No. 217 of 2023 by this Court was exhaustive.

On rejoinder, counsel for the applicant reiterated what was submitted in chief.

For the Application for grant of leave to appeal to the Court of Appeal to succeed, the applicant must prove that there is arguable point of law unattended, and that the same need the attention of the Court of Appeal for determination.

See the cases of **Jirey Nestory Mutalemwa vs Ngorongoro Conservation Area Authority**, Civil Application No. 154 of 2016 CAT. *Alle*

(Unreported) and **Gaudencia Mzungu vs IDM Mzumbe**, Civil Application No. 94 of 1999 CAT (unreported). In the case of **Lazaro Mabinza vs The General Manager, Mbeya Cement Co. Ltd**, Civil Application No. 1 of 1999 it was held that; -

'Leave to appeal should be granted in matters of public importance and serious misdirection or no non direction likely to result in failure of justice.'

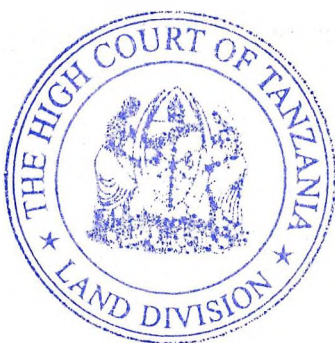
Also, in the case of **Said Ramadhan Mnyanga vs Abdallah Salehe** [1996] TLR 74 it was held that; -

'for leave to appeal to be granted, the application must demonstrate that there are serious and contentious issues of law or fact fit for consideration by the CAT.'

In the instant Application, basing on the above reasons it is my finding that there is a point of law that require the attention of the Court of Appeal as demonstrated in the affidavit of the applicant.

I hereby grant the Application. Costs shall follow the event.

It is so ordered.




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A. MSAFIRI

JUDGE

12/12/2023