

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

MISC. LAND APPLICATION No. 684 OF 2023

TWAHA WAZIRI MBWAMBO.....APPLICANT

VERSUS

ABDUL LWALA.....RESPONDENT

RULING

30/11/2023 & 18/12/2023

A. MSAFIRI, J

This is a ruling on the Application whereby the above named applicant is seeking for leave to appeal to the Court of Appeal of Tanzania having been aggrieved by the decision of this Court in Misc. Land Application No. 639 of 2018 dated 20th December, 2019 by Hon. Kakolaki, J. The Application has been brought under Section 5(1) (c) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019 and Rule 45(a) of the Tanzania Court of Appeal Rules, 2009 as amended and also Section 47(1) of the Land Disputes Courts Act, Cap 216 R.E.2019.

The Application is supported by an affidavit of Twaha Waziri Mbwambo, the applicant himself and is contested by the respondent, Abdul Lwala through a counter affidavit affirmed by himself. The applicant also filed a reply to the counter affidavit.

Alls.

The Application was heard by way of written submissions and the submissions in chief by the applicant was drawn and filed by Mr Wilson Edward Ogunde, learned advocate while the reply submission by the respondent was drawn gratis by Ms Irene Felix Nambuo, learned advocate from Legal and Human Rights Centre (LHRC) and it was filed by the respondent.

I commend both parties for their well-articulated submissions and the referred authorities which has greatly assisted this Court in determination of this matter. I have no intention of reproducing all words which were submitted but I will give a brief background of the matter as per the pleadings and the submissions.

The applicant was also an applicant in Land Application No. 247 of 2015 before the District Land and Housing Tribunal of Temeke. He had sued the current respondent and other 12 people who are not party to this Application. He was claiming against the then respondents severally and jointly for recovery of piece of land which the 2nd to 13 respondents sold to the 1st respondent. After hearing, the trial Tribunal found the Application to have no merit and dismissed it with costs.

The applicant was dissatisfied with the decision and filed an appeal in this Court on 7th September 2018 but it was rejected on the ground that it was time barred. Then the applicant filed an Application No. 639

Atls.

of 2018 for extension of time to lodge an appeal which was dismissed by Hon. Kakolaki, J on 20th December 2019 for want of merit. That decision is a source of this Application where the applicant now seeks leave of this Court as he intends to challenge the decision of Hon. Kakolaki, J to the Court of Appeal.

In his submission, Mr Ogunde stated that in order for the Court to grant leave to appeal, the applicant must demonstrate to the satisfaction of the court, grounds which show a prima facie or arguable appeal.

He stated that in the present Application, grounds which the applicant wishes to invite the Court of Appeal to determine are found at paragraph No.9 of the affidavit in support of the Application. That those grounds raise serious questions worth determination by the Court of Appeal. That the applicant has met the criterion set for the court to exercise its discretion and grant leave to appeal. He prayed for the Application to allowed.

To bolster his points, the counsel cited the case of **Lightness Damiani & 5 others vs. Said Kasim Chageka**, Civil Application No. 450/17 of 2020, CAT at DSM.

Atls.

In reply, Ms. Nambuo submitted in contest of Application by reminding the Court that leave to appeal to the Court of Appeal cannot be granted automatically. That the Court of Appeal listed conditions upon which leave to appeal may be granted or refused as stated in the case of **British Broadcasting Corporation vs. Erick Sikujua Ng'maryo**, Civil Application No. 138 of 2004 (Unreported), that leave to appeal will be granted where the grounds of appeal raise issues of general importance or a novel point of law.

She submitted further that it is unfortunate that the applicant have failed to raise issues of general importance and show if the appeal is arguable. That, basing on paragraph 9 of the applicant's affidavit, all the purported issues were determined by this Court. That it is clear that the applicant have raises no ground to support/warrant leave to be granted to him by this Court.

Ms Nambuo added that the applicant has filed this Application against only one respondent while the original proceedings from Temeke District Tribunal in Application No.247 of 2015, the applicant had filed the case against thirteen (13) respondents. The counsel argued that this Application is incompetent for not joining the original parties. To support this point, the counsel cited the case of **Salim Amour Diwani vs. The Vice Chancellor Nelson Mandela African**

Atts.

Institution of Science & Technology & another, Civil Application No. 116 of 2021 [2023] TZCA 33. She prayed for the dismissal of the Application with costs.

There was no rejoinder.

Having gone through the submissions of parties in support and contest of the Application, the point for my determination is whether the Application has merits.

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."*

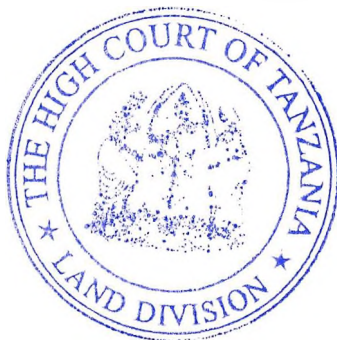
Alle.


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 paragraph 9 of the applicant's affidavit, I am satisfied that there are three arguable points of law as I have observed them herein above.

I have also considered the argument by the counsel for the respondent that the applicant has filed this Application against one respondent only while there was 13 respondents during the trial. It is my finding that this point have been raised prematurely and can be dealt with properly before the appellate court.

In upshot, 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
18/12/2023