

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

MISC. LAND CASE APPLICATION NO.529 OF 2023

(Originating from Land Appeal No. 288 of 2021)

DEO THOMAS.....APPLICANT

VERSUS

MEEDA RAJABU.....1ST RESPONDENT

BAKARI ALI KIPOTO.....2ND RESPONDENT

RULING

Date of Last Order: 19.10.2023

Date of Ruling: 24. 10 .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, given by Mhina J vide Land Appeal No. 288 of 2021.

The Application was made under **Section 47(2) of the Land Disputes Courts Act, Cap 216 R. E. 2019** and **Section 5(1)(c) of the Appellate Jurisdiction Act, Cap 141 R. E. 2019** and **Rule 45(a) of the Court of Appeal Rules, GN No. 344 of 2019**. It was accompanied by the affidavit of the applicants himself, Deo Thomas.

The Application was heard by written submissions. The applicant was represented by Advocate Salha S. Mlilima, while both respondents appeared in person.

In her submissions, Advocate Salha, insisted that, the application has merits and should be allowed. To cement her arguments, she referred the Court to the case of **Ilemela Municipal Council versus Ndeonasia Joseph Marenghe, Misc. Civil Application No. 86 of 2022, High Court of Tanzania at Mwanza, (unreported)**. The applicant's counsel maintained that, this Application comes, following the failure of this Court to see whether the ownership was legally transferred to the appellant.

In reply, the respondents maintained that, the Application lacks sufficient reasons and it is highly misconceived and without merits. They cited a number of authorities, including the case of **British Broadcasting Corporation versus Ngamaryo, Civil Application No. 138 of 2004**. They insisted that, the prospective appeal lacks the chance of success, hence it should be rejected as stated in **Harban Haji Mosi and Another versus Hilal Seif and Another {2001} TLR 409**

I have considered the arguments of the applicant and the respondents. Also, gone through the affidavit in support of the application and the Counter Affidavit against it. The question for determination is whether the application has merit or not.

I will be guided by the case of **David Naburi as the Administrator of the estate of the late Maeda Naburi versus Stephen Sangu, Misc. Land Application No. 960 of 2017, High Court of Tanzania, Land Division, Dar es Salaam, {unreported}**, where it was observed that, in allowing the application for Leave to Appeal, the following issues have to be considered; (i) the rights of parties against who the Decision of Court which the intended appeal is sought, (ii) whether the Decision in

question is an appealable and (iii) there must be valid grounds as opposed to chance of success that the party wishes to appeal.

In the present Application, the applicant has shown an interest to challenge the decision of Mhina, J. It is without doubts that, he has the right to do so, considering the fact that, the Decision itself is appealable. Therefore, knocking on the doors of the Court of Appeal to appeal against it is inevitable and this Court cannot act as a bar to the applicant in exercising his constitutional rights. Most importantly, he has listed the grounds of appeal in the submission given by his counsel. The same are valid grounds of Appeal, worth of the attention of the Court of Appeal of Tanzania.

In the end, I find merits in this Application and consequently, the leave is hereby granted without costs.

It is so ordered.




T. N. MWENEGOHA
JUDGE

24/10/2023