

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 543 OF 2022

(Arising from Land Appeal No. 14 of 2022 Originating from the District Land and Housing Tribunal for Temeke in Land Application No. 233 of 2018)

AHMED ABDURAHMAN SHARIFF (As Administrator of the estate

Of the late ZAMZAM ABDUL MAJID OTHMAN) 1ST APPLICANT

JUMA ALLY MULIMBIKA 2ND APPLICANT

VERSUS

HAMIS OMARY KIVUGO (As Administrator of the estate

Of the late ZAMZAM ABDUL MAJID OTHMAN) RESPONDENT

RULING

Date of last Order 11.01.2023

Date of Ruling 19.01.2023

A.Z.MGEYEKWA, J

This application is brought under section 47 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The applicant seeks leave to appeal to the Court of Appeal of Tanzania to impugn the decision of this Court in

Land Appeal No. 14 of 2022 delivered on 9th August, 2022. The application is supported by an amended affidavit affirmed by Ahmed Abdurahman Shariff, the 1st applicant. The respondent feverishly opposed the application. In a counter-affidavit affirmed by Hamis Omary Kivugo, the respondent.

When the matter was called for hearing before this court on 7th December, 2022, the applicants appeared in person. The respondent did not show appearance. By the court order and consent of the parties, the application was argued by way of written submissions. Pursuant thereto, both parties complied with the Court schedule.

In his written submissions, the applicant submitted that he was aggrieved by the decision of this Court in Land Appeal No. 14 of 2022 delivered on the 9th August, 2022 hence he intends to appeal to the Court of Appeal of Tanzania against the Judgment and Decree of this Court. The applicant stated that the instant application is brought under section 47 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. He urged this Court to adopt his affidavit and form part of his submission.

The applicant asserted that he wants to challenge the decision of this Court, hence, he has raised grounds that draw the attention of the Court of Appeal of Tanzania as stated under paragraph 5 of his affidavit. The applicant went on to state that in application for leave to appeal to the

Court of Appeal of Tanzania, the law requires the applicant to ascertain whether there is merit in the intended appeal and the matter raises contentious issues of law which are fit for further consideration by the Court of Appeal of Tanzania. Supporting his submission, he cited the cases of **Sango Bay Estate Ltd & Others v Distributor Bank [1971] EA 17** and **Nudbhai N. Rattansi v Ministry of Water Construction, Energy Land and Environment & Another [2005] TLR 220**.

The applicant went on to submit that there are issues of law that needs to be determined by the Court of Appeal as stated under paragraph 5 of his affidavit.

In conclusion, the applicants urged this Court to grant the applicant's application with costs upon the respondent.

In respond, the respondent urged this Court to adopt his counter affidavit and form part of his submission. The respondent was brief and straight to the point. He submitted that granting leave to appeal to the Court of Appeal is within the discretion of this Court, however, that discretion should be exercised judiciously and the applicant must convince this Court that there is a point of law fit for consideration by the Court of Appeal. He contended that before granting leave to appeal, this Court must satisfy itself that the applicant has demonstrated contentious point which he wants to take to the Court of Appeal or of public importance or contain

serious issues of misdirection or likely to result in a miscarriage of justice. To support his submission he cited the case of **Sango Bay Estate Ltd & Others v Dresdner Bank** [1974] EA 17. It was his submission that in the application at hand the applicants have failed to demonstrate that there is a serious point of law which requires further consideration by the Court of Appeal. He contended that the trial tribunal proved that the Certificate of Title in the name of ZamZam Abdul Majid was unlawfully obtained since the person who sold the suit land to ZamZam Abdul Majid had no capacity to sell it, he was not a lawful owner of the suit land.

The respondent continued to argue that the applicant in his affidavit did not state the points of law instead they have pointed out the grounds which requires evidence to prove their allegations.

In conclusion, the respondent beckoned upon this Court to dismiss the applicant's application with costs.

In their brief rejoinder, the applicants maintained their submission in chief. Stressing on the point of demonstration of triable issues, they claimed that they have raised arguable ground worthy the consideration of the Court of Appeal. The applicants contended that the respondent has failed to challenge the grounds stated by the applicants instead they are arguing an appeal. Ending, they urged this Court to grant their prayers sought in Chamber Summons.

Having heard the rival submissions of the learned counsel for the applicant and respondents, it now behooves the Court to determine whether the applicant and his counsel have raised sufficient grounds or a disturbing feature capable of engaging the Court of Appeal of Tanzania to intervene.

It is the legal position ascertainment whether the legal threshold for granting an application for leave has been met, which entails carrying out a thorough evaluation of the averments made in the supporting affidavit. Leave to appeal to the court of Appeal must be on the satisfaction that the intended appeal raises issues of general importance or a novel point of law or where there is prima facie, or arguable appeal as it was held in the case of **Sango Bay v Dresdner Bank A.G** [1971] EA 17, it was held that:-

" Leave to appeal will be granted where prima facie it appears that there are grounds which merit serious judicial attention and determination by a superior Court."

Guided by the above authority it is plain and certain that leave to appeal to the Court is grantable on such conditions were, with lucidity, expounded by the Court in the case of **British Broadcasting Corporation v Eric Sikujua Ng'amaryo**, Civil Application No. 138 of 2004 (both unreported). In the case of **Rutagatina C. L. v The Advocates Committee and Another**, Civil Application No. 98 of 2010 the Court stated that: -

*"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: **Buckie v Holmes** (1926) ALL £ R. 90 at page 91). However, where the ground") of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted."*

Regarding the above holding, the Court of Appeal emphasized that the disturbing features must be in the form of serious points of law that warrant the attention of the Court of Appeal.

In the instant application, the central issue for my determination is *whether the grounds raised by the applicants are embraced in the conditions set out in the above decisions of the Court for the grant of leave to appeal.*

Reading the above authority, I have noted that in paragraph 5 of the applicant's affidavit, the applicants have raised three points of law that they think attract the attention of the Court of Appeal of Tanzania. The respondent valiantly argued that the points raised by the applicant require evidence and the same were proved during the trial.

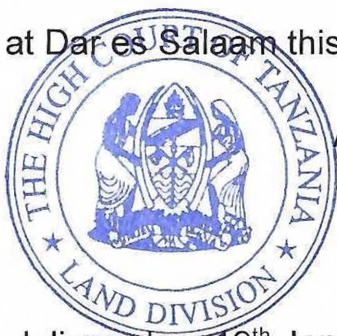
I have perused the said points of law and find that the first and second issues are not clear and thus the same are not arguable grounds that attract the attention of the Court of Appeal of Tanzania. The respondent's

counsel opposed the application, he contended that there is no arguable case. I hold a divergent view from what the respondent's counsel submission. I take the view that there is pertinent question that constitute an arguable case, which attracts the Justices of the Court of Appeal, the third issue on whether the title passed from Shida Athuman to Jamal Ally Malimbika, is an arguable ground that attracts the attention of the Court of Appeal of Tanzania. In my considered view, the third point of law is fit in respect of which the guidance of the Court of Appeal is required.

In consequence, this application succeeds. The applicant is granted leave to appeal to the Court of Appeal of Tanzania. Costs to be in the cause.

Order accordingly.

Dated at Dar es Salaam this date 19th January, 2023.



A.Z.MGEYEKWA

JUDGE

19.01.2023

Ruling delivered on 19th January, 2023 in the presence of the applicant.



A.Z.MGEYEKWA

JUDGE

19.01.2023