

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

**MISC. LAND APPLICATION NO. 269 OF 2022**

(Arising from Misc. Land Appeal No. 13 of 2022)

**TUNGU RAMADHANI .....APPLICANT**

**VERSUS**

**DORA JAPHER MINJA.....RESPONDENT**

Date of Last Order: 21.12.2022  
Date of Ruling: 06.02.2023

**RULING**

**V.L. MAKANI, J.**

The applicant TUNGU RAMADHANI has filed this application seeking leave of this court to appeal to the Court of Appeal against the decision in Misc. Land Appeal No. 13 of 2022 (Hon. A.Z. Mgeyekwa, J).

The application is made under section 5(1)(c) of the Appellate Jurisdiction Act CAP 141 RE 2019 and Rule 45(a) of the Court of Appeal Rules and any other enabling law. The application is supported by the affidavit of the applicant herein. The respondent filed a counter-affidavit in opposition of the application.

With leave of the court the application was argued by way of written submissions. The submissions on behalf of the applicant were drawn and filed by Ms. Anna Stephen Assey, Advocate; while those on behalf of the respondent were drawn and filed by Mr. John E. Mponela, Advocate.

According to Ms. Assey, the application is brought under section 47(1) of the Land Disputes Court Act CAP 216 RE 2019 and section 5(1) (c) of the Appellate Jurisdiction Act. She said in paragraph 5 of the affidavit of the applicant there are important points of law and facts to be submitted to the Court of Appeal for their decision. Ms. Assey pointed out that the applicant understands that the respondent herein does not have a claim against him as she is not the owner of the property at Mabwepande which is subject of the appeal (the **suit property**). She said the record shows that the suit property was sold to the children of the respondent who are four and so the respondent has no claim over the appellant even when she filed her case at Mabwepande Ward Tribunal in Land Dispute No. 0083 of 2020 which resulted to the issue of *locus standi* which was turned down by the 2<sup>nd</sup> appellate court as it was not a ground in the 1<sup>st</sup> appellate court. She said it is time for the Court of Appeal to interfere and clarify on the issue whether it was proper for the High

Court to summarily reject to address the issue of *locus standi* considering that the issue goes to jurisdiction of the Ward Tribunal to entertain the matter in dispute. She said the intervention of the Court of Appeal is of importance to ascertain whether the decision of Mabwepande Ward Tribunal was legally obtained. Ms. Assey relied on the case of **British Broadcasting Corporation vs. Eric Sikuja Ng'maryo, Civil Application No. 138 of 2004 (CAT-DSM)** (unreported). she said in paragraph 5(iii) of the affidavit the applicant is seeking the intervention of the Court of Appeal to address if the High Court (2<sup>nd</sup> appellate court) has the powers to assess and re-evaluate the evidence of the trial court. She relied on the case of **Mussa Mwaikunda vs. Republic [2006] TLR 387** where the Court of Appeal stated that on second appeal the court rarely interferes with the concurrent findings of fact by the courts below. She lastly stated in paragraphs 5(ii) and (iv) of the affidavit that there are disturbing features which have been highlighted in the proceedings of the High Court which needs the guidance of the Court of Appeal and the reasons have a great chance of success when considered. She prayed for the application to be granted.

In response Mr. Mponela for the respondent adopted the counter affidavit to be part of his submissions. He said all the issues raised by the applicant are not issues involving pure points of law as claimed by the applicant but rather they are issues which need evidence and the same were thoroughly deliberated by the lower courts after adducing evidence and decisions were made thereon.

As for the first point on the *locus standi* of the respondent at the Ward Tribunal, Mr. Mponela said this was well elaborated and established in the Ward Tribunal, and at the appellate level in both the District Tribunal and the High Court it was decided that the respondent was the owner of the suit property. He thus said the institution of the suit at the Ward Tribunal was therefore lawful.

As for the second point Mr. Mponela said this is not a pure point of law that requires the intervention of the Court of Appeal as it was dealt with at the District Tribunal and High Court. He said Mr. Kyaro Japher did not buy land from the respondent, but he testified that he was given a piece of land from the 5 acres, and on that basis one cannot say that there was transfer of ownership. He said exhibits 2,3,4 and 5 produced at the

Ward Tribunal were inadmissible as they were contrary to section 47(1) of the Stamp Duty Act CAP 189 RE 2019.

As for the third point Mr. Mponela said this is not a pure point of law that requires the intervention of the Court of Appeal as the appellate courts have the powers to exercise their discretion in re-evaluation of the evidence of the Ward Tribunal. He said the appellate courts were satisfied on how the Ward Tribunal handled the case and gave their verdict.

On the fourth point, Mr. Mponela said it is the practice that in rejoinder submissions a party cannot raise a new issue which cannot be responded to by the other party. He said the rationale is that each party has an equal opportunity to address issues of the day fairly without denying the right of any party. If the principle is not observed, responding to a new issue litigation would not come to an end. He said this is not a point of law worthy the determination of the Court of Appeal.

On the last point, Counsel denied that it is a point to be determined by the Court of Appeal. He said the District Tribunal re-evaluated the

evidence by the Ward Tribunal and made its findings that the respondent had a strong case and ruled in her favour.

In conclusion Mr. Mponela said the arguments raised by the applicant are devoid of merit and none of the five (5) points raised are worthy consideration and guidance of the Court of Appeal. He thus prayed for the application to be dismissed with costs.

The applicant did not file submissions in rejoinder.

An application for leave to appeal to the Court of Appeal is granted where the proceedings as a whole reveal such disturbing features as to require the intervention and guidance of the Court of Appeal. The rationale behind is to spare the Court of Appeal of numerous matters which have no merit, and or which have already been dealt with the lower courts.

In the case of **British Broadcasting Corporation** (supra) the court held as follows:

*"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 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 v Holmes** (1926) ALL E.R. Rep. 90 at page 91). However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted”.*

It is, therefore, the duty of the applicant to demonstrate serious points of law that need to be considered by the Court of Appeal (see **Simon Kabaka Daniel vs. Mwita Marwa Nyanga’nyi & 11 Others [1989] TLR 64**).

I have considered the arguments by Counsel of the parties and I have also gone through the affidavit and counter affidavit. The point for determination is whether the applicant has advanced points of law which needs the intervention of the Court of Appeal.

According to the affidavit there are 5 points raised by the applicant requiring the intervention of the Court of Appeal. I have given them a detailed consideration, but I have noted that these points were well addressed by the High Court. The issue of *locus standi* was satisfactorily covered by the District Tribunal as well as the High Court stating that the respondent had *locus standi* as there was no proved transfer from the respondent to her children. Further, evaluation of

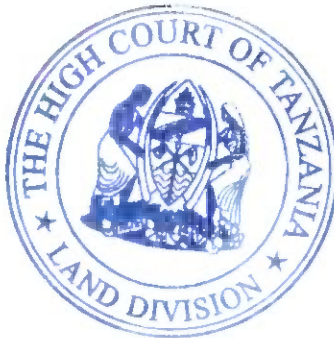
evidence was also well canvassed in the evidence that was adduced at the Ward Tribunal. The fact that a matter cannot be addressed at the appellate stage if it was not raised in the trial Tribunal and determined is a principle of the law and was covered by the District Tribunal and elaborated further in the High Court. In that regard, I am satisfied that evidence was analysed properly in the Ward and District Tribunals as well as the High Court, so the Court of Appeal's intervention is not necessary. On whether the appellant has a legal right to support his rejoinder by case law this issue was not argued by Ms. Assey in her submissions, but in practice, as correctly pointed out by Mr. Mponela, if case law is cited in the rejoinder the other party's right to a response would be restricted as he would not be able to react as to principle that have been alluded in the case law. In view thereof I find this point very basic as such would not require the guidance of the Court of Appeal.

For the forgoing reasons, I find nothing controversial in the reasoning and decision of the Judgment in Land Appeal No.13 of 2022 which needs the attention of the Court of Appeal of Tanzania as set out in **BBC vs. Eric Ng'imaryo and Simon Kabaka Daniel** (supra).



The application therefore has no merit, and it is hereby dismissed with costs.

It is so ordered.



*V.L. Makani*  
**V.L. MAKANI**  
**JUDGE**  
**06/02/2023**