

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA DISTRICT REGISTRY**

AT ARUSHA

MISC. LAND APPLICATION NO. 72 OF 2019

**(C/F Appeal no. 23/2017, Original, District Land and Housing Tribunal for Manyara
at Babati, Application No. 95 of 2013)**

VICENT YUDA.....APPLICANT

VERSUS

SABINA MODEST.....1ST RESPONDENT

SALAHU BURA.....2ND RESPONDENT

RULING

22/04/2020 & 19/06/2020

GWAE, J

Before me is an application for leave brought under section 47 (2) of the Land Disputes Courts Act, Cap 216 R.E 2002 as amended by section 9 of the Written Laws Misc. Amendment Act No. 3 of 2018. The application is supported by a sworn affidavit of the applicant **Vicent Yuda** and countered by a joint counter affidavit of the respondents **Sabina Modest** and **Salaho Bura**. It is the prayer of the applicant that this Court be pleased to grant leave to appeal to the Court of Appeal of Tanzania against Judgment and decree of the court (**Mzuna, J**) in Land Appeal No. 23 of 2017 dated 13th September, 2019.

On the date fixed for hearing of this application the applicant enjoyed the legal representation of the learned counsel **Mr. Ephraim Koisenge**

from **National Attorneys**, whereas the respondents were unrepresented. Both parties had nothing important to say in their oral submissions.

Section 9 (b) (2) of the Written Laws Misc. Amendment Act No. 8 of 2018 reads that;

“(2) A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may, with leave of the High Court or Court of Appeal, appeal to the Court of Appeal.”

It follows that it is a requirement of the law that a party who wishes to appeal to the Court of Appeal on matters originating from the District Land and Housing Tribunal must first obtain leave from the High Court. The leave is however granted by the High Court upon satisfaction that there is a point of law which needs the attention of the Court of Appeal and that the grounds of appeal intended to be challenged to the Court of Appeal are meritorious. The above principals have been enunciate in the following case laws; **Simon Kabaka Daniel vs. Mwita Marwa Nyang'**and **and 11 others** (1989) TLR 64 where it was stated that;

"in application for leave to the Court of Appeal the application must demonstrate that there is a point of law involved for the attention of the Court of Appeal....."

It was further stated in the case of **Sango Bay Estates Ltd and others vs. Dresdner Bank A.G** [1971]1 EA 17 that;

"leave to appeal from an order in civil proceedings will normally be granted where prima facie it appears that there are grounds of appeal which merit serious judicial consideration."

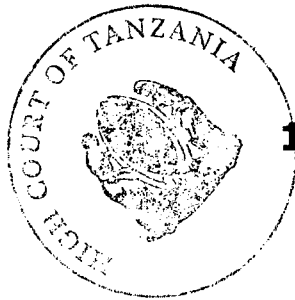
That being the position of the law, I have gone through the applicant's application particularly in the applicant's affidavit at paragraph 6 the applicant has demonstrated the following proposed grounds of appeal which he is intending to appeal to the Court of Appeal of Tanzania;


- i. Whether the trial tribunal has properly considered and entertained the opinion of the assessors as mandatorily required by the law.
- ii. Whether the trial tribunal was properly and legally composed as required by the law of the land.
- iii. Whether the trial chairman of the tribunal exercised his jurisdiction in accordance with the law in adjudication of the suit before him.
- iv. Whether the first appellate Judge was right and correct in law for holding the sale agreement was not sold in the absence of written sale agreement notwithstanding the overwhelming evidence of the sale agreement.
- v. Whether the first appellate court properly appreciates the variation and contradiction of the respondent's testimonies in inconformity with the pleadings initiate the proceedings before the trial tribunal.

Having looked at the proposed grounds of appeal in relation to the judgment intended to be appealed, I am of the view that this application is grantable

That being told, this application is hereby granted. Costs of this application shall be in the course.

It is so ordered.




M.R. GWAE
JUDGE
19/06/2020