

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC. LAND APPLICATION NO. 149 OF 2018

(C/F Land Appeal No. 34/2017 High Court of Tanzania at Arusha, Land Appeal No. 55 of 2016 in the District Land and Housing Tribunal of Arusha, originating from Sinon Ward Tribuna, Land Case No. 04 of 2016)

ASHER NAFTAL.....APPLICANT

VERSUS

CORNELIO ALLY.....RESPONDENT

RULING

21/04/2020 & 18/06/2020

GWAE, J

The applicant hereinabove has brought this application under section 47 (1) (2) of the Land Disputes Courts Act, Cap 216 R.E 2002 with a prayer that this court be pleased to grant leave to the applicant to appeal to the Court of Appeal and a certificate that there is a point of law involved in the appeal.

The application is supported by a sworn affidavit of the applicant and countered by a counter affidavit of the respondent **Cornelio Ally**.

On the date fixed for hearing of this application the applicant enjoyed the legal representation of the learned counsel **Ms. Ednah Mndeme** whereas the respondent appeared in person. The application was argued

orally, Ms. Mndeme prayed for the adoption of his affidavit together with the demonstrated points of law and prayed for the grant of the application. The respondent on the other hand argued that he duly filed his submission in respect of the Appeal No. 34/2017 within time as per the court schedule. He thus prayed for the dismissal of the application. Ms. Mndeme had nothing to rejoin.

Section 47 (1) (2) of the Land disputes Court Act (supra) read together with section 9 of the written Laws Misc. Amendment Act No. 8 of 2018 provides for a requirement that a party who wishes to appeal to the Court of Appeal where the matter originates from the Ward Tribunal must first seek leave from the High Court and a Certificate which demonstrate that there are points of laws to be ascertained by the Court of appeal.

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'anyi & 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, having gone through the applicant's application together with the accompanying memorandum of appeal, the applicant has demonstrated the following points of law for determination by the Court of Appeal of Tanzania;

1. Whether the claim of the appellant in the trial tribunal was time barred.
2. Whether it was just for the 2nd appellate court to consider the belated filed submissions of the respondent against the appellant.
3. Whether it was just and fair for the court to determine the appeal without fair hearing to the appellant.

From the above demonstrated points of law in relation to the judgment intended to be appealed to the Court of Appeal, I find that point of law number **one** and two require the intervention of the Court of Appeal as they are points of law unlike ground number **three**, which is nothing but purely a matter of evidence and facts, and upon perusal of the records I have observed that both parties argued their case through written submissions.

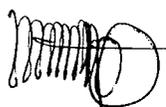
That being told, this application is hereby granted and the following points are hereby certified for consideration by the Court of Appeal of Tanzania

1. Whether the claim of the appellant in the trial tribunal was time barred.
2. Whether it was just for the 2nd appellate court to consider the belated filed submissions of the respondent against the appellant.

Costs of this application shall abide the intended appeal

It so ordered.




M.R.GWAE
JUDGE
18/06/2020