

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF KIGOMA

AT KIGOMA

MISC. LAND APPLICATION NO. 19 OF 2019

JOSEPH BENJAMIN RUGUNDU APPLICANT

VERSUS

KASULU DISTRICT CONSUMERS

CO-OPERATIVE SOCIETY LTD RESPONDENT

RULING

Dated: 10/3/2020

Before: Hon. A. Matuma - Judge

The applicant in the services of Mr. Kelvin Kayaga learned advocate, is seeking leave to appeal to the court of Appeal of Tanzania against the judgment of this court delivered against him on the 15th November, 2020. The application has been made under the provisions of section 47 (2) of the Land Disputes Courts Act, chapter 216 R.E 2002 as amended by Written Laws Miscellaneous Amendment Act no. 8 of 2018 and rule 45 (a) of the Court of Appeal rules, 2009.

The respondent in the service of Mr. Kagashe learned advocate filed counter affidavit in opposition to the application.

Mr. Kayaga learned advocate for the applicant advanced three grounds upon which leave is sought. The said grounds reads as follows;-

- " i. *Whether the decision of the District Land and Housing Tribunal in Land Application No. 18 of 2008 delivered on 13/11/2009 in favour of the Respondent did not occasion injustice to the applicant who*

had been declared the owner of the same disputed Plot by the decision of the Kasulu Ward Tribunal on 26/9/2008.

ii. Whether the change of assessors without reasons did not affect the jurisdiction of the District Land and Housing Tribunal.

iii. Whether the overriding objective principle was wrongly relied upon by the Honourable Judge against the Mandatory provisions of the procedural laws.

The herein above grounds have been contested by the respondent. Mr. Kagashe argued that leave is not an automatic right and the same is only granted where there is a disturbing feature in the impugned judgment that needs guidance of the Court of Appeal. He cited the case of **British Broadcasting Corporation versus Erick Sikujua Ng'maryo, Civil Application No. 138 of 2004**. He contended that there being no dispute over matters of evidence between the parties it is on of Public importance to grant leave as the applicant is trying to find a new trial.

Mr. Kelvin Kayaga forcefully stressed that the High Court vacated the Procedural laws in its considered judgment and misapplied the Principle of Overriding Objective.

I have gone through the impugned judgment and I am of the settled view that the appeal to this Court by the appellant did not have even a single complaint on the evaluation of the evidence by the trial tribunal or the manner of its reception on record. The Appeal based solely on omission of the trial Tribunal on certain procedures. The Court observed that as there was no complaint on evidence and the matter had been pending in Court for eleven years (11) it was not wealthy to disturb substantive justice on mere technical grounds occasioned a decade ago. That ~~finding~~ is the center of the

complaint of the applicant that this court violated the mandatory Procedural provisions of the Laws. For this application to have contained some legal issues, I find it wealthy the raised issues to be considered by the Court of appeal of Tanzania so that the Court of Appeal can in addition to the intended complaints, can consider whether it is wealth to disturb the substantive justice on technical provisions when the parties are not at issue on matters of facts and evidence.

In the circumstances leave to the applicant to appeal to the Court of Appeal of Tanzania is hereby granted. No orders as to costs as up to this juncture, it is the respondent who has overthrown the applicant on appeal.

It is so ordered.



A handwritten signature in black ink, appearing to be "A. Matuma", is written over a horizontal dotted line.

**A. Matuma,
Judge,
10/3/2020**