

**IN THE HIGH OF THE UNITED REPUBLIC OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)**

AT SUMBAWANGA

MISC. LAND APPLICATION No. 21 OF 2022

(Arising from the decision of the High Court of Tanzania at Sumbawanga in Misc. Land Appeal No. 21 of 2021, emanating from Land Appeal No. 75 of 2020 in the District Land and Housing Tribunal for Rukwa at Sumbawanga, Original Civil Case No. 10 of 2019 from Nkasi Ward Tribunal)

SYLVESTO CHOLE.....APPLICANT

VERSUS

KEREMENSIA MAGANGA.....RESPONDENT

RULING

16/05/2023 & 12/06/2023

MWENEMPAZI, J.

The applicant is seeking leave to appeal to the Court of Appeal against the decision of this Court in Misc. Land Appeal No. 27 of 2021 dated 15th August 2022. By way of chamber summons supported by an affidavit of the Applicant himself, the application has been brought under Section 47 (2) of the Land Disputes Court Act, Act No. 2 of 2002 [Cap 216 R. E. 2019], Section 5 (1) (c) of the Appellate Jurisdiction Act, 1979 and Rule 45 (a) of the Court of Appeal Rules, 2009 as amended by Rule 6 of the Tanzania Court of Appeal (Amendments) Rules, 2017 G.N No. 362 of 2017].

According to the applicant's affidavit, the issues to be addressed by the Court of Appeal of Tanzania against the decision of this Court are;

- i. Whether this honourable court properly considered the principle that parties are bound by their pleadings on the issue of size of the land whose location is unknown throughout the records, to entitle this honourable court to declare the respondent as lawful owner of 8 acres of land as the disputed land.**
- ii. Whether it was legally justifiable for this appellate court to gloss over and uphold the decision of the trial tribunal which was not constituted in accordance with the law.**
- iii. Whether it was legally justifiable for the court to gloss over and uphold the decision of the trial tribunal whose proceedings are vitiated for failure to accommodate opinion and/or decision of the members of the tribunal.**
- iv. Whether it was legally justifiable for this court being the second appellate court to re-evaluate the evidence in record.**
- v. Whether the respondent properly sued the applicant having the respondent alleged that the applicant had**

already gifted the land in dispute to the applicant's children.

On the 16th day of May, 2023 as the matter was scheduled for hearing, the applicant was represented by Mr. Mathias Budodi, learned advocate and the respondent had no legal representation, so she appeared in person.

Mr. Budodi submitted first that, this application is brought under section 47(2) of Land Disputes Courts Act, Cap 216 R.E 2019 read together with section 5(1) (c) of the appellate jurisdiction Act, 141 R.E and Rule 45A of Court of Court of Appeal Rules, 2009, and he prayed for the chamber summons and supporting affidavit to be adopted. The learned counsel then proceeded that, basically, they are praying to have certification of points of law and if certified be discussed by the Court of Appeal, because the basic case started in the ward tribunal.

Mr. Budodi submitted further that, since the affidavit has been adopted, he prayed to be brief in his submission and he proceeded that their 1st point is at paragraph 7(1) of the affidavit in which they would like the Court of Appeal to see if the principle that parties are bound by their pleadings was properly considered by the 1st appellate Court. That This Court ordered that the appellant is the owner of the farm measuring 8 acres while in the ward tribunal the respondent claimed for

1 acre. He insisted that there is need to consider the said principle it was an issue in the case of **Registered Trustees of Roman Catholic Archdiocese of Dar es Salaam vs Sophia Kamani**, Civil Appeal No. 156 of 2015; Court of Appeal of Tanzania at Dar es Salaam at Dar es Salaam at page 10.

Mr. Budodi then proceeded to the second point that whether it was proper for this Court to uphold the decision of the ward tribunal which of the time of decision was not proper constituted as per law. He submitted that, the basis of this point is section 11 of Land Disputes Courts Act, Cap 216 of 2002 which requires that the ward tribunal in its seating must have at least three women and the secretary of the ward tribunal is not among the deciding members. He then added that though the point was not discussed during appeal, but since it is a point of law going to the root of the case, the Court had a legal mandate and duty to address the issue as per the case of **Adelina Koku Anifa & Another vs Byangabe Alex**, Civil Appeal No. 46 of 2019, Court of Appeal of Tanzania at Bukoba. Where it was held that an issue of law may be raised at any stage and that the Court has a duty to raise and require parties to address the issue and determine it.

Submitting on the third point as found on paragraph 7(iii), Mr. Budodi submitted that, when the Land and Housing Tribunal seats,

opinion of assessors must be seen in the proceedings and decision, if it is not seen and complied then it vitiates the proceedings and the decision.

The learned counsel then submitted for the sixth point that whether it was legally justifiable for this Court being the second appellate Court to re-evaluate the evidence in record. He said, this Court re-evaluated the evidence of the ward tribunal disregarding that it was the second appellate Court and in so doing, they would want the Court of Appeal to discuss whether it was proper.

Coming to the last point at paragraph 7(ii) of the affidavit which stated that whether the respondent had locus standi. Mr. Budodi submitted that; the basis of this point is that the respondent testified that the area she was claiming had already been given to her child. He therefore prayed for this application to be granted with costs.

In reply, the respondent submitted that she is not conversant with legal issues but she knows that the farm in dispute belongs to her and her late husband.

It is trite law that, before considering granting leave to appeal to the Court of Appeal, the Court must satisfy itself that, the Applicant demonstrates that, there is a point of law involved in order to attract the attention of the Court of Appeal. This is and will remain the position as

was in the case of **Harban Haji Mosi and Another vs. Omar Hilal Seif and Another, Civil Reference No. 19 of 1997** (Unreported) Lugakingira J.A (as he then was) who held inter alia that: -

"Leave is grantable where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceedings as a whole reveal such disturbing features as to require the guidance of the Court of Appeal."

In the light of the case of **Principal Secretary, Ministry of Defence & National Service vs. Devram Valambhia [1992] TLR 185** the Court of Appeal observed that;

"In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and, if the alleged illegality be established, to take appropriate measures to put the matter and record right."

In an application for leave to appeal under Section 5 (1) (c) of the Appellate Jurisdiction Act, like the present one, leave may be granted where there is likelihood of success of the intended appeal. The court have no reason to canvass on the merits and demerits of the intended appeal as discussed in the above cited cases of **Harban Haji Mosi and**

another {supra} and Principal Secretary, Ministry of Defence & National Service vs. Devram Valambhia (Supra).

Having carefully considered the application and the issues as raised by the applicant, I am convinced that this case suffices the attention of the Court of Appeal, and therefore I certify that the points raised are legal in nature and also that leave to appeal to the Court of Appeal of Tanzania has to be granted. Therefore, this application is hereby granted as prayed. I make no orders as to costs.

Ordered accordingly.

Dated and delivered at **Sumbawanga** this 12th day of June, 2023.



A handwritten signature in blue ink, appearing to read "T. M. Mwenempazi".

T. M. MWENEMPAZI

JUDGE