

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
THE SUB-REGISTRY OF TABORA
MISC. LAND APPLICATION NO. 2 OF 2023

*(Arising from Land Appeal No. 20/2021 and Land Application No. 42 of 2017 of
Tabora District Land and Housing Tribunal)*

MLELA RAMADHANI

(An Administrator of the estate of

the late MAGANGA MLELA) -----APPLICANT

VERSUS

MAHONA BUTUNGULU -----RESPONDENT

RULING

Date: 26/07/2023 & 18/08/2023

BAHATI SALEMA, J.:

The applicant **Mlela Ramadhani**, the administrator of the estate of the late Maganga Mlela filed this instant application seeking leave to appeal to the Court of Appeal of Tanzania against the decision of this Court in Land Appeal No. 20 of 2021. The application has been brought under section 47 (1) of **the Land Dispute (Courts) Act**, Cap 216 [R.E 2019] and any other enabling provisions of laws supported by the applicant's affidavit which counter affidavit deposited by the respondent contested.

Section 47(1) of **the Land Dispute Courts Act**, Cap. 216 [R.E 2019] upon which this application is founded states 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.

According to the record in hand, during the lifetime of the applicant's father, the respondent had several quarrels with the deceased over the

ownership of the disputed land located at Tumbi village measuring 10 acres. Their grievances were requested at the District Land and Housing Tribunal via Land Application No. 42/2017 wherein the respondent was announced to be the owner by way of adverse possession.

Distressed, the applicant appealed to this Court faulting the judgment of the District Land and Housing Tribunal; upon hearing of the appeal, the respondent was again declared a lawful owner of the suit land hence this application for leave to appeal to the Court of Appeal of Tanzania.

In the affidavit, the applicant has matched four grounds upon which the intended appeal will be founded;

- 1. Whether the Court overlooked the doctrine of adverse possession as the base of finding at the District Land Tribunal;*
- 2. Whether the issue of Res-judicata was not well addressed;*
- 3. That whether the Court was proper to give the land to the respondent who had no proof or evidence of ownership of the land;*
- 4. Whether the Court properly evaluated the weight of evidence before it.*

During the hearing of the application, the applicant appeared in person unrepresented whereas the respondent enjoyed the service of Ms. Agnes Simba. On his part, the applicant had nothing to add than a prayer to adopt his affidavit to form part of the proceedings.

On the other hand, Ms Agnes prayed the Court to adopt the respondent's counter affidavit, she added that since the tribunal and the High Court had already elaborated there is no need of going to the Court of Appeal because there is no chance of success.

It is a requirement of law set under section 47(1) of **the Land Dispute Courts Act** for a party intending to appeal to the Court of Appeal of Tanzania on matters emanating from decisions of the High Court in its appellate or revisional jurisdiction to apply for leave of the Court before initiating the appeal. That requirement was emphasized in the Case of **Dorina N. Mkumwa vs Edwin David Hamis**, Civil Appeal No. 53 of 2017 where the Court stated;

*"In land disputes, the High Court is the final Court on matters of **fact**. The Legislature has taken this finality so seriously that it has, under subsection (1) and (2) of section 47 of Cap 216 [as amended by the Written Laws (Miscellaneous Amendment) Act (No. 03) Act, 2018 Act No. 8 of 2018] imposed on the intending appellant the statutory duty to obtain either leave or a certificate on point of law before appealing to this Court."*

The Court of Appeal of Tanzania has on numerous occasions addressed the danger in the likelihood of going into the substantive part of the intended appeal when determining the applications of this kind. In the case of **Jireyes Nestory Mutalemwa vs Ngorongoro Conservation Area Authority CAT Application No. 154 of 2016**, the court stated that: -

"The duty of the Court at this stage is to confine itself to the determination of whether the proposed ground raises an arguable issue(s) before the Court in the event leave is granted. It is for this reason the Court brushed away the requirement to show that the appeal stands better chance of success as a factor to be considered for the grant of

leave to appeal. It is logical that holding so at this stage amounts to prejudging the merit of the appeal."

The applicant in this application has observed all the requirements of the law on lodging the application, the only issue left for my determination and without touching the substantive part of the intended appeal is whether the application succeeds.

Having tested the depth of the grounds leveled by the applicant in connection with the record and the submissions made in this Court, I am convinced that the application succeeds in respect of the intended grounds No. 1, 2 and 4. As to ground no. 3, the same lacks the qualities of being a ground of appeal to the Court of Appeal because it is not a pure point of law.

That being said and done, leave is granted to the extent explained above. The applicant is at liberty to file the intended appeal in accordance with the law. Right of appeal explained.

Order accordingly.



A. BAHATI SALEMA

JUDGE

18/08/2023

Court: Ruling delivered in presence of both parties.



A. BAHATI SALEMA

JUDGE

18/08/2023