

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC LAND APPLICATION NO. 399 OF 2020**

*(Arising from Land Appeal No. 176 of 2019 as per Hon. Maghimbi, J)*

**ALI SHOMARI..... APPLICANT**

**VERSUS**

**JUMA SAID (The Administrator of the Estate of the late Saidi Juma) ..... RESPONDENT**

**RULING**

05/05/2021 & 12/05/2021

**I. MAIGE, J**

This application has been preferred under sections 47 (1) of the Land Disputes Courts Act, (2) of 2002 as amended by section 9(b)(2) of the written Laws (Miscellaneous Amendments) No.3 Act No. 8 Of 2018 and Section 5(1) (c) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002. It is for a grant of leave to appeal to the Court of Appeal of Tanzania ("CAT") against the decision of this Court in Land Appeal No. 176 of 2019 dated 23<sup>rd</sup> June, 2020 as per Madame Judge Maghimbi. The application is founded on the affidavit by the applicant which has been opposed by the counter affidavit of the respondent.

The merit or otherwise of the application was argued by way of written submissions which were presented within the allotted time. Both parties presented their written submissions in persons.

In his written submissions, the applicant started by adopting the affidavit to read as part of his submissions. The rest of his submission was in address of the issue as to whether sufficient cause for extension of time has been established as if the application hereof is for extension of time. That is so, notwithstanding that, the application was filed well within time. To the extent that it addresses the irrelevant issue of extension of time, the applicant's written submissions shall not be considered. Equally so for the respondent's written submissions in reply in so far as it address an irrelevant issue of extension of time.

It is a settled principle of law that, for the Court to grant leave to appeal to the Court of Appeal, the applicant has to establish by affidavit or otherwise that, the intended appeal involves serious points which require attention of the Court of Appeal. This position was stated in among other authorities, the case of **British Broadcasting Corporation vs Eric Sikuja Ng'amaryo**, Civil Application No. 138 of 2004 (unreported) where it was stated that;

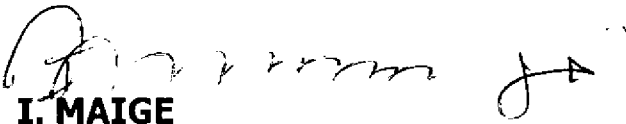
*"As a matter of general principle, leave to appeal will be granted where the grounds of appeal raise issues of general importance or novel point of law or where the grounds show a prima facie or arguable appeal (see **Buckle v Holmes (1926) ALL E.E. 90 at page 91**). However, where the grounds of appeal are frivolous, vexatious, or useless or hypothetical, no leave will be granted"*

In the judgment under discussion, the controversy between the parties was on the ownership of the suit property. The applicant associated his ownership with a letter of offer issued in 2008. The respondent though not in possession of a written document of title, associated his ownership on the suit property from succession of his late father. He further supported his claim with some Property Tax Demands which were issued prior to 2008. In its Judgment, this Court upheld the decision of the trial tribunal.

In paragraph 9 of the affidavit, the applicant has pinpointed some points which would in his view, deserve attention of the Court of Appeal. I have taken time to read the respective paragraph. I am satisfied, in my mind, that, the affidavit demonstrates one issue which in my view is neither frivolous nor vexatious. It indeed deserves attention of the Court of Appeal. The issue is as follows:-

- 1. Whether the respondent adduced sufficient evidence to rebut the applicant's documentary evidence in the letter of offer.*

In my view therefore, the application has merit and it is accordingly granted. Leave to appeal to the Court of Appeal against the decision under discussion is hereby granted. I will not give any order as to cost in the circumstances.

  
**I. MAIGE**  
**JUDGE**  
**12/05/2021**

**Date 12/05/2021**

Coram: Hon. A.S. Chugulu - DR.

For the Applicant: Present in person

For the Respondent: Present in person

**RMA: Bukuku**

**COURT:**

Ruling delivered this 12<sup>th</sup> day of May, 2021 in the presence of applicant in person and respondent in person.



  
**A.S. Chugulu**

**DEPUTY REGISTRAR**

**12/05/2021**