

IN THE HIGH COURT OF TANZANIA  
(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. LAND APPLICATION NO 10 OF 2022

(Originating from Land Appeal No. 5 of 2021)

MOHAMED HAMISI MAWA.....APPLICANT

VERSUS

SELEMANI OMARY ..... 1<sup>ST</sup> RESPONDENT

OMARY MMANGA NDUMBU ..... 2<sup>ND</sup> RESPONDENT

RULING

**Muruke, J**

This is an application by the applicant, Mohamedi Hamisi Mawa (The administrator of the estate of the late Hamisi Mawa), for leave to appeal to the Court of Appeal of Tanzania against the decision of this court (Mipawa, J) dated 4<sup>th</sup> day of September, 2012 in Land Appeal No. 5 of 2011. The application is made under section 5 (1) (c) of the Appellate Jurisdiction Act, (Cap. 141 R.E 2002), and section 14(1) of law of Limitation Act Cap 89 R.E. 2002. It is supported by an affidavit affirmed by Mohamedi Hamisi Mawa, the applicant. Relevant paragraph reads as follows: -

*(16). Having received the certificate of delay. He filed Civil Appeal No. 13 of 2018 before the court of appeal of Tanzania.*

*(17). On 22<sup>nd</sup> March 2022, the Court of Appeal while struck out Civil Appeal No. 13 of 2018 on the ground that certificate of delay issued by the Deputy Registrar was defective.*

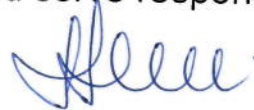
*(18). That I received typed order of the Court of Appeal at Dar es salaam on 08<sup>th</sup> April 2022 and immediately thereafter has preferred this application.*

***(19). That decision of the High Court of Tanzania which I'm intending to challenge is based on illegality in that proceedings and decision of the trial tribunal were nullity as the assessors assumed the role of advocates and cross examined parties and also did not read out to the parties their opinion contrary to the law.***

Having considered the above averments in the applicant's affidavit in support of the application, the issue is whether leave to appeal to the Court of Appeal should be granted. Leave to appeal is not automatic. It is within the discretion of the court to grant or refuse it. The discretion must, however be exercised judiciously and on basis of the material before the court. As a matter general principle, leave to appeal will be granted where the grounds of appeal raise issues of general importance or a novel point of law or where the ground show a prima facie or arguable appeal.

The issues raised by the applicant in his affidavit particularly at paragraph 19 (a) to (d) cannot be labelled as frivolous, vexatious or useless. I think there is need for the Court of Appeal to see for itself whether the grounds raised by the applicant in the aforesaid paragraph are meritorious or not. Same cannot be done without extension to be granted.

Extension of time to applicant to file leave to appeal to the Court of Appeal, file notice, and serve Respondent is granted. Notice to be filed within 14 days from 3<sup>rd</sup> November, 2022 and serve respondent within 7 days from the date filed.



**Z. G. Muruke**

**Judge**

**02/11/2022**



Ruling delivered in the presence of applicant and 2<sup>nd</sup> respondent.



**Z. G. Muruke**

**Judge**

**02/11/2022**

