

IN THE HIGH COURT OF TANZANIA

TABORA SUB REGISTRY

AT TABORA

MISC. LAND APPLICATION NO.41 OF 2021

*(Arising from Misc. Land Appeal No. 20/2020 of the High Court of
Tabora)*

JUMA KILONGOZI.....APPLICANT

VERSUS

HAMIS MAPUTO.....RESPONDENT

RULING

Date of Last Order: 25/11/2022

Date of Delivery: 7/02/2023

AMOUR S. KHAMIS, J.

Juma Kilongozi sought leave to appeal to the Court of Appeal of Tanzania against the whole Judgement and Decree of this Court given by Hon. A.A. Bahati, J on 08/09/2021 in Misc. Land Case Appeal No. 20 Of 2020.

The application was brought by way of Chamber Summons under S. 47(2) of the Land Disputes Courts Act, [Cap 216 R.E 2019]

and accompanied by an affidavit of Samwel Ndanga, learned advocate.

Records show that, Juma Kilongozi instituted Land Dispute No. 13 of 2018 at Malolo Ward Tribunal and unsuccessfully appealed to the District Land and Housing Tribunal for Tabora in Land Case No. 2 of 2019.

Dissatisfied with the decision of the District Land and Housing Tribunal, Juma Kilongozi ineffectively appealed before this Court vide Land Appeal No. 20 of 2020.

In that appeal, this Court upheld the first appellate tribunal's decision which declared the respondent, Hamis Maputo, as the lawful owner of the disputed parcel of land.

Still aggrieved with the decision of this Court, Juma Kilongozi now seeks leave of this Court to challenge the impugned decision to the Court of Appeal.

The affidavit in support of the Chamber Summons sworn by Mr. Samwel Lucas Ndanga, learned advocate for the applicant, stipulates grounds for the intended appeal at paragraph 4, thus;

- i) *Whether it was proper to institute while the appellant lacks locus standi.*
- ii) *Whether it was proper in law to give judgement in favor of the respondent while the trial court lacks pecuniary jurisdiction.*

- iii) *Whether the seller/giver is not a necessary party into the issue of recovering the suit land to the third party.*
- iv) *Whether the appellate court has the right to raise the issue of adverse possession suo moto without giving the parties the right to defend it.*
- v) *whether the adverse possession is a pure point of law.*

When this matter was placed before me for hearing, both parties appeared in person and proceeded viva voce. At that point, Hamis Maputo, the respondent herein, informed the Court that he did not dispute the application.

It should go on record that no counter affidavit was filed by the respondent.

I have considered the grounds raised in the affidavit of Mr. Samwel Lucas Ndanga. I have also taken into account a fact that despite of the applicant's conceding to the application, it is the duty of this Court to weigh out whether or not the application discloses contentious issues for determination by the Court of Appeal.

This position of law was expressed in the case of **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo, (Misc. Civil Application No. 138 of 2004) [2005] TZCA 93**, whether the Court of Appeal insisting on discretionary use of power in granting leave, said;

“Needless to say, leave to appeal is not automatic. It is within the discretion of the work of the Court to grant or

refuse leave. The discretion should however be judiciously exercised and on the materials before the Court. As 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... However, where the grounds of appeal are frivolous, vexatious, useless or hypothetical, no leave will be granted.”

It should be noted that leave to appeal to the Court of Appeal is a mandatory requirement for the party intending to challenge decision of the High Court which originates from the Ward Tribunal.

In considering whether or not to grant leave to appeal, this Court is aware of the jurisprudential guidance in determining applications of that nature, that is, to avoid possibility of going to the substantive part of issues in the intended appeal.

In the case of **Jireyes Nestory Mutalemwa vs. Ngorongoro Conservation Area Authority, CAT, Application No. 154 Of 2016 (Unreported)**, the Court of Appeal observed that, the Court shall consider the grounds for seeking leave in isolation of the submissions seeming to challenge the findings of the High Court.

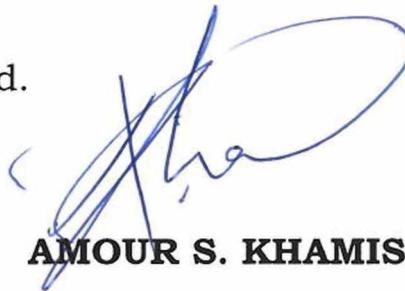
Guided by the principle raised in the case above, strength or otherwise of the grounds raised by the applicant in the supporting affidavit cannot be solved without a detailed re-examination of the impugned decision, an act which is not within the power of this Court, rather, it is a business of the Court of Appeal.

However, on their face, the grounds raised in the supporting affidavit in comparison to nature of the impugned decision, raise arguable issues to be considered by the Court of Appeal.

Therefore, I am convinced that there is sufficient cause established by the applicant to warrant granting of leave to appeal.

In this respect, the application for leave to appeal to the Court of Appeal of Tanzania is hereby granted. Each party to bear own costs.

It is so ordered.



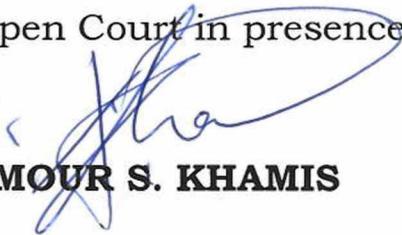
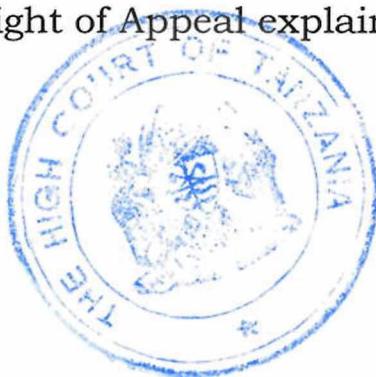
AMOUR S. KHAMIS

JUDGE

7/02/2023

ORDER

Ruling delivered in open Court in presence of both parties.
Right of Appeal explained.



AMOUR S. KHAMIS

JUDGE

7/02/2023