

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

MISC. LAND APPLICATION NO. 08 OF 2022

RAMADHANI KASONSO APPLICANT

VERSUS

ALBINA FRANCIS RESPONDENT

(Originating from Land Appeal No. 35/2020 of the High Court (T) Sumbawanga Registry, Land Appeal No.19/2020 of Mpanda DLHT and Land Dispute No. 04/2020 of Kakese Ward Tribunal)

RULING

Date of Last Order: 05/10/2022

Date of Ruling: 21/11/2022

MWENEMPAZI, J.:

This ruling emanates from the application made by the applicant herein.

The applicant filed this application under Section 47 (2) of the Land Disputes Courts Act, cap 216 [R.E.2019] as mended, seeking leave to appeal to the Court of Appeal against the decision of this court dated 23/03/2022 in Land Appeal no. 35/2020. This application is also supported by the affidavit of the applicant.

As the matter was filed before this court, the respondent has never entered appearance at all, albeit efforts to serve her with summons to the extent of issuing the same in the "Nipashe" newspaper but the efforts have proved failure.

When this case was scheduled for hearing, the Applicant submitted that as he complied to the orders of the court by publishing the summons in the "Nipashe" newspaper dated August 12th 2022 at page 18 and yet the Respondent has not appeared before the court, and that he prayed for this court to hear the matter ex-parte.

Therefore, the matter was heard ex-parte and as the Applicant had no legal representation, he represented himself. In doing so, he submitted that he has brought this application for leave to appeal to the Court of Appeal because the respondent had raised a complaint for 3 acres, but during the hearing the quorum/composition of the members was not met.

He added that, at the District Land and Housing Tribunal the matter was ordered to start afresh, and in doing so, that the respondent claimed for eight (8) acres, whereas the case was heard and determined. The respondent won the 8 acres.

The applicant proceeded that, this court on the second appeal confirmed the decision but did not consider the respondent's original complaint that was 3 acres and not eight acres. And therefore, the applicant intends to appeal to the Court of Appeal because he believes that justice has not been met, and that his affidavit stresses that there are points of laws that are to be determined by the Court of Appeal.

I have keenly perused the documents filed by the Applicant herein and

considered the submissions made by him. In finding out whether this court has been properly moved and whether this application has merit or not, the main issue in my considered view is ***whether the applicant has advanced clear points of law and grounds to warrant this court to grant certificate and leave to appeal*** to the court of Appeal.

It is the settled position of the law that for the court to consider an application for leave to appeal to the court of appeal, there must be point/s of law to be determined. It is also a trait of law that granting of leave or certificate to appeal to the Court of Appeal is a discretionary to the court. The law on this point is very clear on what should the court consider before granting leave or certificate to appeal to the Court of Appeal of Tanzania against the judgment or order given by this Court as I alluded above.

It is clear that the decision which is intended to be appealed was made by this court in the exercise of its appellate jurisdiction. This means that the applicant was right to file an application under the relevant provisions of the law. However, before the High court grants certificate to appeal to the court of appeal, the applicant must clearly show the points of laws that were not determined by the Judge who made the decision against him.

The requirement for showing point/points of law for any party seeking leave from the High Court to appeal to the Court of Appeal is provided for under **Section 5(2)(c)** of the **Appellate Jurisdiction Act, Cap 141**

[R.E.2019] which provides that:

"No appeal shall lie against any decision or order of the High Court in any proceedings unless the High Court certifies that a point of law is involved in the decision or order."

This was also underscored by the Court of Appeal in **NELIMANASE FOYA VS DAMIAN MLINGA, MISC.APPEAL NO. 19 of 1999** at pages 2 and 3

The question is, did the applicant herein indicate any point of law as required by the law? As I perused the affidavit by the applicant, indeed, the applicant has points of law that needs to be determined by the Court of appeal. The first issue to be resolved concerns the ownership of the disputed land, whereas the second issue concerns the actual size of the disputed area. To me these two issues are clearly points of law that need to be determined by the Court of Appeal.

In my perusal of the impugned judgment, I have indeed noticed that there are legal points and issues that need to be determined by the Court Appeal, and in light of what I have observed and reasoned, I find it proper that the Applicant should be granted leave to appeal to the Court of Appeal as prayed.

In the result, I grant the application as prayed. The Applicant shall file his appeal to the Court of Appeal within the time prescribed by the law from this date. I make no orders as to costs.

It is so ordered.



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

T.M. MWENEMPAZI

JUDGE

21/11/2022.