

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

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC.LAND APPLICATION NO 753 OF 2018**

*(Originating from the judgment of the High Court of Tanzania, Land Division at Dar es salaam in Land Appeal No 66 of 2017 made by Hon. Makuru, J on the 09<sup>th</sup> day of October, 2019)*

**FATUMA KILEO .....APPLICANT**

**VERSUS**

**MBEZI MGAZA MKOMWA.....RESPONDENT**

**RULING:**

**HON I.MAIGE.J.**

The application before hand is for leave to appeal to the Court of Appeal of Tanzania against the decision of this Court in Land Appeal No 66 of 2017 dated on 09<sup>th</sup> Day of October 2018 by Honorable Makuru J.

The application is made under section 47(1) of the **Land Courts Disputes Act, Cap. 216, R.E., 2019** and is founded on the affidavit of the applicant. It has been opposed by the counter affidavit of the respondent. By the direction of the Court, the application was argued by way of written submissions which were filed within the allotted time. **Adolf Wenceslaus Mahay**, learned advocate, presented the written submissions for the

applicant whereas the respondent who was not represented personally filed the same. I have duly considered the rival submissions and I will hereunder determine the application.

The leave sought in this application is for pursuing an appeal against a Judgment of this Court on appeal. It was against a decision of the District Land and Housing Tribunal for Kinondoni dismissing an application for setting aside an *ex parte* judgment. The **first appellate tribunal** was being challenged for not setting aside the *ex parte* decision despite the fact that the order to proceed *ex parte* was entered into without the trial chairperson ascertaining whether service of summons to the applicant was effected. The presiding Judge refused to consider the ground for the reason that it was not raised in the application, the subject of the appeal. She therefore dismissed the appeal for want of merit.

In his submissions in support of the application Mr. Mahay, learned advocate for the applicant contends that, in entertaining the matter *ex parte* without ascertaining that summons was duly served on the applicant, the trial chairperson improperly exercised his jurisdiction and denied the applicant a right to be heard. In his humble opinion, that constituted an element of illegality which would suffice to allow the appeal so that the illegality could be corrected. In his submissions in refutation, the respondent contended that since the issue was not raised in the application at the trial tribunal, it could not be the basis for the determination of the appeal. The issue raised in the submissions as aforestated is in my view *bonafide* and pertinent as to

deserve attention on the Court of Appeal. It is on that account that I grant the application.

In the final result, the application is hereby granted with costs.

It is so ordered.



J. Maige

**JUDGE**

**09/04/2020**



**Date: 09/04/2020**

**Coram:** Hon. D.P. Ngunyale - DR

For the Applicant :  
For the Respondent : Present

**RMA:** Bukuku

**COURT:**

Ruling delivered in the presence of the both parties in person`.



A handwritten signature in black ink, appearing to be "D.P. Ngunyale".

D.P. Ngunyale

**DEPUTY REGISTRAR**

**09/04/2020**