

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC LAND APPLICATION NO. 380 OF 2023

(Arising from Misc. Land application No. 79/2023, Land Division)

SAID SELEMANI MAMOJA.....APPLICANT

VERSUS

COMMISSIONER FOR LANDS.....1ST RESPONDENT

DIRECTOR OF SURVEY AND MAPPING.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

15/09/2023 to 20/09/2023

E.B. LUVANDA, J

The Applicant named above is seeking leave to appeal to the Court of appeal against the decision of this Court dated 25/05/2023 in Misc. Land Application No. 79/2013, refusing to set aside the dismissal order dated 23/02/2023 in Land Case No. 146/2022. At paragraph seven of the affidavit in support, the Applicant grounded reasons for leave in a form of long drawn arguments, I will therefore paraphrase as hereunder: One, he is faulting the decision of this Court on a finding that the affidavit of the Applicant and his Counsel are marred with contradictions on how the information for dismissal procured,

arguing this finding to be erroneous because that is not what the affidavits states; Two, he is faulting this Court for treating facts and circumstances leading to delays to attend in court as tantamount to mere narrations which did not amount to reasons for delay in attending to the court proceedings; Three, argued the Court ought to consider the reasons for delay and non appearance before the judge which were in the form of narrations of act and circumstances leading to the delay; Four, this Court ought to consider the conduct of the Applicant prior to the dismissal as relevant factor and sufficient cause; Finally, this Court ought to consider that it was not a total absence, rather delay which this Court did not found to be negligent, deliberate or intentional.

The Respondent opposed the application and grounds above, on account that the findings of this Court in Misc. Land Application No. 79/2023 proved that there was no sufficient reasons advanced to warrant the court to grant the order sought.

In his submission in chief, Mr. Daimu Halfani learned Counsel for Applicant, in a bid to buff up his grounds, cited the case of **Msagala Pagi Zilihona vs. Pagi Bujiku**, Civil Application No. 17/2020 HC. Honourable Mgeyekwa, J as she then was, for a proposition that the conduct before the dismissal is

a relevant consideration (ground number Four); **Kidodi Sugar Estate & Others vs. Tanga Petroleum Co. Ltd**, Civil Application No. 110/2009, for a proposition that if it was not a total absence, is an indication of seriousness on the defaulting party. The learned Counsel cited the case of **British Broadcasting Corporation vs. Eric Sikujua Ng'maryo**, Civil Application No. 138/2004 CAT, where the apex Court laid down principles for granting leave to appeal to the Court of Appeal.

In rebuttal, Ms. Victoria Ally Lugendo learned State Attorney, submitted that although powers to grant leave are within the discretion of the court they should be exercised judiciously. She submitted that the affidavit of the Applicant and his Counsel were contradictory hence they failed to advance good reasons for their absence in court. She submitted that being available in the court corridors does not amount to appearance, citing **Phares Wambura & 15 Others vs. Tanzania Electric Supply Company Limited**, Civil Application No. 186/2016 CAT. The learned State Attorney submitted that the Applicant failed to prove that there are any arguable issues to warrant the Court of Appeal intervention, citing **Joram Meagie Lukumay & Minister of Constitutional Affairs & Another**, Misc. Civil Application No. 21/2021, HC.

On rejoinder, the learned Counsel for Applicant submitted that in paragraph seven of the affidavit in support of this application the Applicant outlines issues of law and fact which are fit to be considered by the Court of Appeal. He submitted that the counter arguments made by the learned State Attorney vindicate that the issues are contested and arguable.

Arguably, powers to grant leave are within the discretion of the court, but a paramount consideration being it must be exercised judiciously.

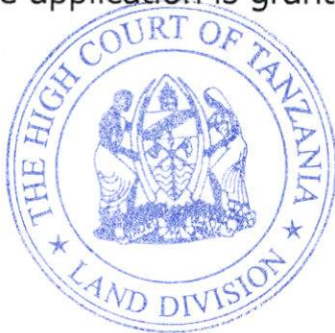
It is common ground that at this leave stage, this court does not sit on determining validity or otherwise chances of success of the intended grounds for leave, rather to my view this Court its domain is to assess whether the intended grounds are arguable and worth for consideration by the apex Court. In the case of **Ng'maryo** (supra) at pages 6 to 7, the apex Court ruled, I quote,

*"Needless to say, leave to appeal is not automatic. It is within the discretion of the court to grant or refuse leave. The discretion must, however judiciously exercised and on the materials before the court. As a matter of general principles, 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 grounds show a prima facie or **arguable appeal**".*

On my consideration on the grounds for the intended appeal vis-a-vis rival argument in opposition of the same, my discretion tilt in favour of the Applicant, regard being to the alleged disparity in the affidavits of the Applicant and his Counsel and narration for the reasons of non appearance or delay, which featured as main elements of the findings of this Court in the impugned decision.

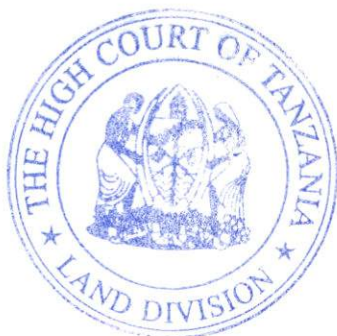
I therefore grant the Applicant leave to appeal to the Court of Appeal to enable his grounds to receive the attention of the Court of Appeal.

The application is granted. No order for costs.



E.B. LUVANDA
JUDGE
20/09/2023

Ruling delivered through virtual court attended by Mr. Daimu Halfani, learned Counsel for the Applicant and Ms. Victoria Lugendo learned State Attorney for the Respondents.



E.B. LUVANDA
JUDGE
20/09/2023