

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI**

MISC. LAND APPLICATION NO. 46 OF 2020

(C/f Land Case Appeal No. 9 of 2018, High Court of Tanzania at Moshi
Original Land Case No. 6 of 2015 District Land and Housing Tribunal for
Moshi at Moshi)

RIMISHO BOBORO SHINEAPPLICANT

VERSUS

KWIRINE MICHAEL SHINERESPONDENT

24th March & 7th May, 2021

RULING

MKAPA, J:

The applicant is seeking for leave to appeal to the Court of Appeal of Tanzania (CAT) against the decision of this Court (**Mutungi, J.**) in **Land Appeal Case No. 9 of 2018** delivered on 26th May, 2020. The application is brought pursuant to section 47 (1) of the Land Dispute Courts Act, Cap 216 and Rule 45 (a) of the Tanzania Court of Appeal Rules, 2009.

Briefly, the relevant facts are that the applicant unsuccessfully sued the respondent at the District Land and Housing Tribunal of Moshi at Moshi (trial tribunal) in **Land Application No. 6 of 2015**. The dispute related to a piece of land measuring one acre situated at Ibukoni Village Kilamfuamokala Ward in Rombo

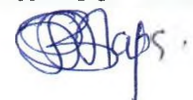
District (suit land) which the plaintiff claimed the respondent to have trespassed. The applicant who is a paternal uncle to the respondent claimed that the latter trespassed into his suit land. He emphasize that, he inherited the suit land from his late father (respondent's grandfather) while the respondent claimed to have inherited the same from his father, (applicant's brother). At the tribunal, the applicant prayed for the Tribunal to declare him a lawful owner of the suit land at the same time declare the respondent a trespasser and be ordered to vacate the suit land. At the end the trial Tribunal decision was in favour of the Respondent. The applicant unsuccessfully appealed to this Court hence this Application for leave to appeal to the Court of Appeal. The application is supported by applicant's sworn affidavit. The respondent did not file a counter affidavit instead, opted to argue orally on the date of hearing. When the application was scheduled for hearing the respondent defaulted appearance and the application proceeded *ex parte*. In his brief submission the applicant prayed this court to adopt the affidavit and form part of his submission. He went on submitting that he is the owner of the suitland as he was born and raised in the suit land. He finally prayed for this Court to allow the application since the respondent is not interested in pursuing the matter as evidenced by his non-appearance before the Court.

Boys

In his affidavit the Applicant craved this Court to consider the following points of determination (grounds of appeal) by the Court of Appeal attached as Annexure A3.

1. That, the trial Tribunal erred in law and fact in making decision basing on time limitation and doctrine of adverse possession without affording parties the right to be heard.
2. That, the trial tribunal as conceded by the 1st appellate Court wrongly interpreted the doctrine of adverse possession and hence arriving at wrong decision.
3. That, the trial tribunal erred in law and fact in considering the opinion of the trial assessors who did not sit at the Tribunal proceedings thus did not have the opportunity to hear and cross examine key prosecution witnesses (PW1 & PW2)
4. That, the trial tribunal as conceded by this Court erred in law and fact in holding that the Respondent is the lawful owner of the suit land.
5. That, this Court erred in law and fact in failing to evaluate properly the evidence on records hence arrived at a wrong decision.

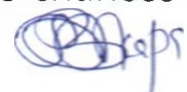
The law is well settled that application for leave to appeal is not automatic and is granted only when there is good reason, normally on a point of law or on point of public importance. This

A handwritten signature in blue ink, appearing to be 'Saps', is written at the end of the text.

legal position was laid down in **British Broadcasting Corporation V Eric Sikujua Ng'maryo**, Civil Application No. 133 of 2004 (Unreported) where the Court held that;

"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 be judiciously exercised on the materials before the court. As a matter of 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 grounds show a prima facie or arguable appeal. However, where the grounds of appeal are frivolous, vexatious or useless or hypothetical, no leave will be granted."

Comparable decision was taken by the Court in **Saidi Ramadhani Mnyanga V Abdallah Salehe** [1996] TLR 74 where it was held *inter alia* that for leave to appeal to be granted, the application must demonstrate that there are serious and contentious issues of law or fact fit for consideration by the Court of Appeal. This court therefore has no reason to traverse on the merits and demerits of the intended appeal but rather consider as to whether there are points of law and reasonable chances of



success or if the proceedings as a whole reveal such unsettling facts that require the Court of Appeal's intervention.

Taking note of the above authorities while subjecting the same to the instant application my view is, the grounds intended to be raised including; whether the doctrine of adverse possession *vis-a-vis* time limitation was properly addressed and substantively proved at the trial tribunal and whether change of trial tribunal sitting assessors' during the proceedings was fatal, are all points of law which ought to be given opportunity for airing before the Court of Appeal.

In view of the foregoing, I grant the Application with no order as to costs.

It is so ordered.

Dated and Delivered at Moshi this 7th day of May, 2021.



A handwritten signature in blue ink, appearing to read "S. B. Mkapa".

S. B. MKAPA

JUDGE

07/05/2021