

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 759 OF 2018

*(Arising from civil appeal no. 140 of 2008; Hon. Wambura J. Judgment and decree dated on 15th October, 2010,
Originating from Kinondoni RM'S court at Kinondoni in Civil Case No. 72 of 1999)*

SAADA BAKARI.....APPLICANT

VERSUS

MAGRETH MKIMA.....RESPONDENT

RULING

Date of last Order: 27/9/2019

Date of Ruling: 22/10/2019

MLYAMBINA, J.

Through the chamber summons made under **Section 5 (i) (c) of the Appellate Jurisdiction Act, Cap 141 R.E 2002** and **Rule 45 (a) of the Tanzania Court of Appeal Rules, 2009**, the Applicant prayed for this court be pleased to grant her with leave to appeal to the Court of Appeal of Tanzania against the judgment and decree of this court in respect of the Civil Appeal No. 140 of 2013 delivered on 15th October, 2010.

The application has been supported with an affidavit of the Applicant Saada Bakari. It is a finding of this court, however, that the orders sought by the Applicant can only be granted by this court if and only if the Applicant demonstrate that there is/are point (s) of law involved for the attention of the Court of Appeal (see the cases of **Simon Kabaka Daniel v. Mwita Marwa Nyang'anyi and 2 Others** (1989) TLR 64 and that of **Saidi Ramadhani Mnyanga v. Abdallah Salehe** (1996) TLR 74.

Under paragraph 10 of the supporting affidavit, the Applicant stated the following points of law intended to be determined by the Court of Appeal:

- a) Whether the Trial Court and the appellate court were seized with jurisdiction to entertain and determine the suit and subsequent appeal in view of the coming into effect of the Land Disputes Courts Act, 2002) and the Land Act, Cap 113 (R.E. 2002).
- b) Whether the High Court had power to revoke the Applicant's right of occupancy in a suit in which the authority responsible for land allocation and revocation had not been joined as a party.
- c) Whether the High Court was right in making a finding that allocating one's Shamba prior to compensation was un procedural and illegal.

On the first point of law, the Applicant stated *inter alia* that, the High Court on appeal wrongly ruled against the Applicant by refusing to grant an appeal despite of the fact that the Applicant was properly and legally allocated the said disputed landed property. Further, there is legal issue for consideration by the Court of Appeal to the effect that the trial court and appellate court had no jurisdiction to hear and determine land cases following the coming into operation of **The Land Disputes Courts Act, 2002 and the Land Act Cap 113 (R.E 2002)** without permission by the Registrar of The Court of Appeal.

In reply, the Respondent argued *inter alia* that both the Trial Court and this Court had jurisdiction to hear and determine the suit and the appeal respectively pursuant to the Chief Justice secular dated 08/10/2008. Thus, under the said secular, the Chief Justice in exercise of the powers

conferred on him by **Section 54 (4) of The Land Disputes Courts Act** extended the time to hear and conclude proceeding and appeal for as long as it took time to finalize the matter in every case.

The Respondent asserted that their case was one of the cases listed by the High Court Registrar (Land Division) and not the Registrar of The Court of Appeal as alleged by the Applicant counsel.

As rejoined by the Applicant, I have noted: **One**, the Respondent replied on the Chief Justice secular dated 08/10/2008. Unfortunately, the said annexure to the Respondent's counter affidavit is incomplete as it did not contain the list of cases.

Two, the secular was issued on 8th October, 2008 but the judgment was delivered on 16th July, 2008 prior to the date of issuing secular.

Three, the complete secular with the list of cases was issued on 12th November, 2007. In that list, the instant case is not forming part of the listed cases subject for the extension by the Chief Justice.

With the afore findings on the jurisdiction point of law and in the light of the cited case of **Mwajibu Kajagi v. Athanasia Dominic Kimoi** High Court of Tanzania Civil Appeal No. 60 of 2006, I find there is a point of law to be determined by the court of appeal.

In the end, the application is granted on merits. Costs shall follow events.



Y. J. MLYAMBINA
JUDGE
22/10/2019

Ruling dated and delivered this 22nd October, 2019 in the presence of Counsel Tesha Florence for the Applicant and Mghusuhi Maswi for the Respondent.



Y. J. MLYAMBINA
JUDGE
22/10/2019