

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

**(KIGOMA DISTRICT REGISTRY)**

**AT KIGOMA**

**LAND DIVISION**

**(APPELLATE JURISDICTION)**

**MISC. LAND APPLICATION NO 11 OF 2020**

*(Arising from Land Appeal Case No. 14 of 2019 of the High Court of Tanzania at Kigoma, Original DLHT at Kigoma Land Case No. 30/2012)*

**M/S MATOBERA INVESTMENT LIMITED.....APPLICANT**

**VERSUS**

**TANZANIA ELECTRICAL, MECHANICAL**

**AND ELECTRONICS SERVICES AGENCY (TEMESA).....RESPONDENT**

**R U L I N G**

26/05/2020 & 27/05/2020

**I.C. MUGETA, J.**

The applicant wishes to appeal to the Court of Appeal. However, she cannot do so without leave of this court in terms of Section 47 (2) of the Land Disputes Courts Act [Cap. 216 R.E. 2019]. This is an application to obtain that leave.

The impugned decision was delivered on 25/3/2020 by my learned brother, Matuma, J. The supporting affidavit has two major issues which the applicant would wish them addressed by the Court of Appeal per paragraph 6 and 7 of the affidavit deponed by Method R.G. Kabuguzi, advocate for the applicant.

- 1. The 1<sup>st</sup> appellate court proceeded to determine the appeal on merits despite finding that there was non-joinder of the seller as a necessary party.*
- 2. The 1<sup>st</sup> appellate court expunged from record all documentary exhibits and relied on flimsy oral evidence to determine the appeal in favour of the respondent.*

In the counter affidavit of Abdi Shaban Kagomba it is deponed that non-joinder of parties is not fatal to the proceedings and that the oral evidence on record was sufficient to determine the case on merits.

On the hearing date, Method Kabuguzi, appeared for the applicant. Keneth Sekwao, Principal Legal Officer represented the respondent. Their submissions mirrored the contents of the affidavit and the counter affidavit.

In their submissions, Mr. Kabuguzi, advocate adopted the affidavit and prayed the application to be granted. Mr. Sekwao adopted the counter affidavit and argued that the law is settled that oral and documentary evidence have equal evidential value, therefore, leave should be withheld. In rejoinder. Mr. Kabuguzi submitted that the oral evidence on record is so flimsy to support the finding of this court.

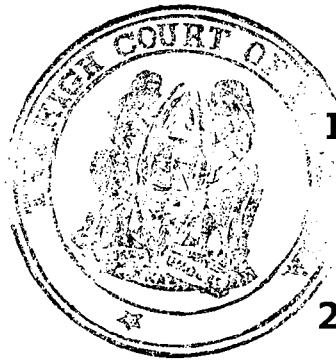
The general principle in applications of this nature is that one does not need to consider merits of the appeal but the mere question whether matters raised are worth consideration of the Court of Appeal. The issues are whether there was non joinder of a necessary party and consequences thereof and whether the oral evidence on record was sufficient to determine the issues before the court.

According to the record, the dispute between the parties involves ownership of land. One party (the respondent) is claiming to have acquired it by purchase on the one hand and on the other hand, there is a misunderstanding on the location of the actual Plot which was purchased by the respondent. The seller of the land is said to be the Consolidated Holding Corporation (CHC) who is not a party to these proceedings.

I have given an earnest consideration of the issue raised I am of the view that in the circumstances of this case the application has merits. Taking into account the fact that this court determined the case on merits, the points raised are of general importance worth consideration by the Court of Appeal namely:-

- (i) Whether the actual Plot sold to the applicant could be identified without the seller being a party to the suit or evidence from her.*
- (ii) Considering the fact that in case of written contracts section 100 of the Evidence Act [Cap. 6 R.E. 2019] excludes oral evidence whether oral evidence on record was sufficient to determine the appeal on merits after expunging the documentary exhibits.*

In the event, leave is hereby granted for the applicant to appeal to the Court of Appeal. As applying for leave is a legal requirement, I give no orders as to costs.



*Mugeta*

**I.C. Mugeta**

**Judge**

**27/05/2020**

**Court:** Ruling delivered in chambers in the presence of Method Kabuguzi for the applicant and Keneth Sekwao for the respondent.

**Sgd: I.C. Mugeta**

**Judge**

**27/05/2020**