

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**MISCELLANEOUS LAND APPLICATION NO. 169 OF 2019**

(Arising from Land Appeal No. 54 of 2016 High Court of Tanzania at Mwanza District Registry, Hon. EBRAHIM, J., dated 05/02/2018; originating from Land Case No. 29 of 2018; originating from Land Case No. 29 of 2015 of the District Land and Housing Tribunal for Geita)

**JOSEPH MLYAMBULI ..... APPLICANT**

**VERSUS**

**MARTHA NYANDA ..... RESPONDENT**

**REASONS FOR THE DECISION**

**24 & 27/02/2020**

**RUMANYIKA, J.:**

When the application under Section 5(1) (c) of the AJA Cap 141 R.E. 2002, with respect to judgment and decree of this court of 05/02/2018 for leave to appeal to the Court of Appeal of Tanzania was called on for hearing on 24/02/2020, Mr. Robert Novitus for Mr. Hezron learned counsel for Martha Nyanda (the respondent) readily supported it. Joseph Mlyambuli (the applicant) who appeared in person for obvious reasons did agree with the respondent's learned counsel. The respondent's concession notwithstanding, I dismissed the application and reserved the reasons therefor. Here are the reasons.

With all intents and purposes an application for leave to appeal against decision of the High Court to the Court of Appeal of Tanzania presupposes that there was arguable point(s) by way of appeal worth to be determined by the highest fountain of justice. The points enumerated by the applicant in the supporting affidavit in essentially read thus:-

- (i) whether from the outset the respondent had **locus standi**.
- (ii) whether the presiding judge improperly evaluated the evidence about sale of the disputed land to the applicant.
- (iii) whether the presiding judge correctly addressed and determined the issue of adverse possession.

Whereas I am mindful of the long settled principle of law that in determining application for leave to appeal this court do not seat to rehear the matter nor does it place itself in a position of the Court of Appeal of Tanzania or even work under assumption of what would have been a position if it sat as a Court of Appeal. This court however cannot assume the job of a conduit pipe. This court therefore is duty bound to, and it saves the role of a safety valve so that only probable and reasonable contentious matter would always go to the Court of Appeal of Tanzania for determination.

The issue whether the respondent had **locus standi** it was sufficiently disposed of by this court (Ebrahim, J) at page 7 of the impugned typed judgment.

**".....At the hearing of the trial, the respondent tendered the judgment of Sima Primary Court on Probate Cause No. 01/2012 which appointed the**

**respondent as the administratrix of the estate of the estate of the deceased on 17/07/2012. The said judgment was admitted without objection as PE1”.**

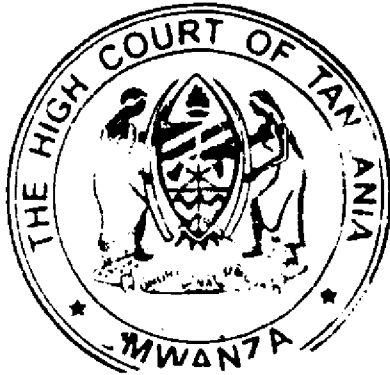
It therefore follows that the applicant's complaint is, but afterthought. After all with respect to the estate, not only the copy of decision granting the respondent the letters of administration was, without objection admitted, the position of the law had not changed that judgment of a court of law also a documents which everyone was bound to take judicial notice of.

**Secondly,** for the reasons therein, the court threw over board the purported sale agreement. That it was not properly witnessed and accordingly attested. I would additionally hold that now that admittedly the disputed land was the respondent's clan/household, at least one member of the family should have witnessed the sale agreement between the applicant and the respondent's deceased mother. Moreover, the fact that the applicant did not claim title until the year 2012 but after the purported vendor was dead, it left much to be desired.

**Thirdly,** now that the applicant had not sufficiently disputed the evidence that for all that long he had the disputed land leased to him by the respondent's mother, the issue of adverse possession shouldn't have raised in the first place. Once a leasee always a leasee.

When all is said, I will increasingly hold that the applicant had no pertinent and arguable point by way of appeal determinable by the Court of Appeal of Tanzania. It is for this reasons that I rejected the respondent's concession and dismissed the application on 24/02/2020.

Right of appeal explained.



  
**S. M. RUMANYIKA**  
**JUDGE**  
**25/02/2020**

Delivered under my hand and seal of the court this 28/02/2020  
in chambers in the absence of the parties who are dully aware.

