IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. CIVIL APPLICATION NO. 99 OF 2020

(Originating from PC Probate Appeal No. 11/2019)

JUMA ISSA AND 3 OTHERS ..... APPLICANTS

VERSUS

CHARLES NDESSI MBUSIRO ..... RESPONDENT

RULING

26/10 & 30/11/2020

RUMANYIKA, J.:

The application is with respect to judgment and decree dated 27/07/2020, in relation to House on Plot No. 65 Block "T" Lumumba Street, Mwanza (the estate) for a certificate on point of law by Juma Issa and three others (the applicants) to appeal to the Court of Appeal of Tanzania. In a nutshell essentially, the points of law sought to be certified are:-

(i) Whether although it was not one of the issues in Nyamagana District Court Civil Revision No. 04/2018 (from Probate Cause No. 176/2016 of Mwanza Urban Primary Court) without hearing the parties the issue of the purported sale of the house was, during appeal properly raised and determined.

(ii) Whether with regard to Probate Cause No. 176 of 2016 one having had the proceedings been nullified the respondent had **locus**

standi in Civil Revision No. 4 of 2018 before Nyamagana District Court.

Messrs Lubango and Hezron learned counsel appeared for the applicants and Charles Ndessi Mbusiro (the respondent) respectively.

In his submissions, Mr. Lubango learned counsel only expounded the points sought to be certified. In other words on that one the learned counsel just faulted my brother judge. That is all.

Mr. Hezron learned counsel submitted; **(a)** that at times the applicant's counsel having had been heard by the court on the issue of sale of the house and, at some stage the respondent was declared the bonafide purchaser, on that one the parties were fairly heard **(b)** that whether instead of Section 30(1) (a) Section 44 of the Magistrates' court Act Cap 11 R.E. 2019 was improperly invoked, it is only the court's jurisdiction and substantive justice that counted given the principles of substantive justice. That is all.

The issue is whether the points raised are worth certification under Section 5(2) (c) of the Appellate Jurisdiction Act and Section 95 of the Civil Procedure Code Chapters 141 and 33 R.E. 2019 respectively under which the application was brought. The answer is no for **two** main reasons:-

(i) Like Mr. Hezron learned counsel argued, with respect to the house and respondent, before this court the issue of ownership it may have not been formally raised and determined yes, but the records also had it, and reasonably the parties had no issue with the fact given its historical back ground. It is on that basis that with effect from 14/12/2015 the respondent's name got into the proceedings

much as like it is the case here, with regard to the same house, the present applicant also applied against the respondent (appellants in the impugned judgment and decree) what a common interest. The issue therefore of the present applicant having had not been heard, it should not even have been raised. After all whether the parties were heard or not it is purely factual not a point of law for certification suffices the ground to dispose of the application.

(ii) With regard to the issue whether or not in the said Revision No. 4 of 2018, the respondent had **locus standi** ,not only factual as it is the point is not worth a certification, but also the stranger respondent had instituted the application prematurely much as instead of going for revision/appeal, one should have exhausted all the remedies available say filing objection proceedings (see the case of **Kezia Violet Mato V. NBC & 3 Others,** Civil Application No. 127 of 2005 (CA)) unreported.

The devoid of merits application is dismissed with costs. It is so ordered.

S. M. RUMANYIKA
JUDGE
16/11/2020

The ruling delivered under my hand and seal of the court in chambers this 30/11/2020 in the presence of Mr. Rubango advocate for all applicants and the respondent in person.

F.H. MAHIMBALI

DEPUTY REGISTRAR

30/11/2020