

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS LAND APPLICATION NO. 214 OF 2019

(Arising from the Decision of High Court of Tanzania Land Appeal No. 59 of 2014 at Mwanza before Hon. Gwae. Delivered on 23rd May, 2016)

BITONGA MWITAAPPLICANT

VERSUS

MASEKE GABRIEL RESPONDENT

RULING

07 & 20/05/2020

RUMANYIKA, J.:

The application is with respect to judgment and decree dated 23/05/2016 of this court (my brother Gwae, J). I think it would bring no harm to state it here that all began at Konawa ward Tribunal, Tarime district. The application is brought under Section 47(2) of Land Disputes Courts Act Cap 216 R.E. 2002 (the Act) for certification of points of law. It is supported by affidavit of Bitoga Mwita (the applicant) whose contents Mr. N. Kisigiro learned counsel adopted during the hearing. Maseke Gabriel (the respondent) appeared in person.

When the application was called on 07/05/2020 for hearing, but following global outbreak of the Coronavirus pandemic and pursuant to my order of 26/03/2020 the parties were present online (mobile numbers

0716094644 and 0765912969) respectively, by way of Audio Teleconferencing they were heard.

Mr. I. Kisigiro learned counsel had three points and he submitted as under:- **One;** that contrary to the law without reasons the District Land and Housing Tribunal chair (the DLHT) parted company with the assessors (case of **Sikudhani Said Magambo V. Simon Richard and Mohamed Robe**, Civil Appeal No. 197 of 2018 (CA), unreported). **Two;** the evidence adduced in the ward tribunal and the decision of the DLHT were at variance because at a later stage the minutes of the clan meeting were missing, **Three;** undisputed having occupied the disputed land for 20 years plus, the appellant lawfully owned it therefore no adverse family member should have disturbed be it for redemption or something. That is it.

The provisions of Section 47 (2) of the Act permit appeals on points of law only. Whether with reasons or not the DLHT chair took the assessors opinion on board or he parted company with them and whether or not by the principle of adverse possession the appellant lawfully owned the disputed land all this were no points of law but purely factual. The two points therefore are no points worth to be certified under Section 47(2) of the Act.

With regard to point number two on the list, during the 2nd appeal Mr. I. Kisigiro learned counsel is on record very expressly having had dropped it (page 2 para 4 of the typed judgment) it is very unfortunate that counsel now brings it back through the rear door. Nevertheless I think within it there would be a point to make and certify for consideration by

the Highest fountain of justice much as although the point was recorded as having been dropped, yet still the leaned counsel submitted on it bitterly (page 3 of the impugned judgment) and the alleged forged copy of the minutes also formed basis of the judgment of the DLHT. Moreover on that one my brother Gwae, J, is on record having found and held:-

".....Upon my due perusal to the records of both tribunals, **the said minutes is not available, not only original but also even a copy of the same are not attached, thus I cannot be in better position to say find if the same was forged or not forged,** I shall thus examine the evidence adduced before the trial tribunal".

Now that with respect to the concurrent decisions of the two tribunals bellow vital as it was the missing copy of the minutes of the clan/family meeting formed part of it all, I entertain no doubts that the point needs be certified. If was to put it together: **Whether where, during hearing of a second appeal a vital peace of documentary evidence was missing a judge can proceed to upholding or reverse the two courts' concurrent findings.**

As such, and only to that extent the application is granted. Given their relationship each party shall bear their costs. It is ordered accordingly.



S. M. RUMANYIKA
JUDGE
20/05/2020

It is delivered under my hand and seal of the court in chambers this 20/05/2020 in absence of the parties with notice (copies to be supplied immediately).



S. M. RUMANYIKA

JUDGE

20/05/2020