

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA
MISC. LAND APPLICATION NO. 121 OF 2020**

Y. P. INVESTMENT CO. LIMITED APPLICANT

VERSUS

PHILBERT MAHENDA 1ST RESPONDENT

FAUSTIN MASEBU 2ND RESPONDENT

RULING

15th & 26th February, 2021

RUMANYIKA, J.:

The application is for leave, with respect to judgment and decree dated 18/11/2020 of the court (Mgeyekwa, J.) so that Y.P. Investment Co. Ltd (the applicant) may appeal to the Court of Appeal of Tanzania against Faustin Masebu (the respondent). It is brought under Section 47(2) of the Land Disputes Courts Act Cap 216 R.E. 2019. It is supported by affidavit of Faustin Anton Malongo whose contents essentially the applicant adopted during the hearing.

Messrs F. A. Malongo and D. Rutahindurwa learned counsel appeared for the applicant and respondent respectively.

Mr. F. A. Malongo learned counsel submitted that there was, in the impugned decision some disturbing features, therefore points of general importance by way of appeal determinable by the Court of Appeal of Tanzania leave alone chances of success as per paragraph 10 of the supporting affidavit (Case of **Mantrac Tanzania Ltd V. Rymond Costa**, Civil Application No. 9 of 2010 (CA) unreported the points being:- **(a)** without hearing the parties the presiding judge having had raised and determined the issue of the assessors' opinion missing **(b)** without any one's application and there wasn't even boundaries dispute the judge having held that the DLHT visit the **locus Inquo (c)** the judge having ordered the matter to be heard afresh but before another chair who shall visit the **locus inquo**.

Mr. D. Rutahindulwa learned counsel had no issue with the rule in the case of **Mantrac** (supra), the learned counsel submitted; **(a)** that whether or not the parties were heard on the issue relating to assessor's opinion it should not have been raised because the issue formed no basis of the impugned decision that if anything, no party was prejudiced after all on that one through written submissions Mr. Malongo advocate for the applicant was heard **(b)** that even if the issue was properly raised and

determined, it was clearly shown in the DLHT proceedings how did the assessors' opinion get its way onto the records (case of **Edina Adam Kinona V. Absolom Sweba**, Civil Appeal No. 286 of 2017 (CA) at Mbeya unreported (c) that actually between the parties there was a dispute on boundaries such that visitation of the **locus Inquo** it was inevitable under the circumstances (case of **Avit Thadeus Masawe V. Isidori Asenga**, Civil Appeal No. 6 of 2017 CAT at Arusha (unreported) much as like it was the case here, location of the disputed land, extent of the boundaries and or neighbours thereof all was at issue (d) that the applicant did not sufficiently show how one would be prejudiced had another competent chair heard them and finalize the matter.

Whereas the central issue, and as such it is the bottom line in applications for leave, it is whether there was, in the impugned decision issues of general importance or disturbing features (case of **Mantrac** (supra)), I would increasingly hold that if, by way of a 2nd appeal the issues were left untouched, substantive injustice would remain there to stay. Having gone twice and thrice through a series of points raised by counsel for the appellant with greatest respect I couldn't see any point worth the name much as end of the day, only to that extent the court ordered a fresh

formed good and sufficient ground for review after all review proceedings and appeal were not alternative of each other much as this application was not meant to reopen the appeal or the instant application being determined on the basis of what could be my decision if I sat in the Court of Appeal of Tanzania provided that on this one I would not pray role of a conduct pipe.

The application is dismissed with costs. It is ordered accordingly.


S. M. RUMANYIKA

JUDGE

17/02/2021

The ruling is delivered under my hand and seal of the court in chambers this 26/02/2021 in the absence of the parties.




S. M. RUMANYIKA

JUDGE

26/02/2021