

IN THE HIGH COURT OF TANZANIA

AT MWANZA

MISC. CIVIL APPLICATION NO. 57 OF 2021

(Application arising from the decision of the High Court of Tanzania at Mwanza in PC. Probate Appeal No. 02 of 2021 (Hon. Mgeyekwa, J) dated 28/04/2021)

DEUSDEDIT KIIZA.....APPLICANT

versus

GEORGE TOSIRI.....1ST RESPONDENT

PAULO TOSIRI.....2ND RESPONDENT

RULING

12th & 22nd July, 2021

RUMANYIKA, J.:

With respect to judgment and decree of this court (Mgeyekwa, J) dated 28/04/2021, the application for a certificate on point of law was brought under Section 5(2)(c) of the Appellate Jurisdiction Act Cap. 141 RE. 2019 (the Act) it is supported by affidavit of Deusdedit Kiiza (the applicant) whose contents essentially Mr. Mussa Nyamwero learned counsel adopted during audio teleconference hearing on 12/07/2021. Mr. Adam Robert learned counsel appeared for George Tosiri and Paulo Tosiri

(the respondents). I heard them through mobile numbers 0716543137 and 0768104666 respectively.

Mr. Mussa Nyamwero learned counsel but in a nutshell he submitted that only with respect to portion of the estate at issue (House No. 009/012 located at Bwiru area, Ilemela District - Mwanza), and the applicant having had objected at Mwanza Urban Primary Court proceedings of Probate Cause No. 1 of 1999 successfully on 31/01/2020, but through District Court Appeal No. 7/2020 the respondents won the battle all through to this court (Mgeyekwa, J), now being 3rd appeal aggrieved he lodged a notice of appeal to the Highest fountain of justice on 21.05.2021 thus the requisite instant application much as, if anything, the applicant wasn't a party to the proceedings that gave rise to nullification of the sale agreement between the applicant and Benjamini Tosiri the previous administrator of the Estate at issue. The point now sought to be certified it reads as quoted **verbatim** as hereunder:-

Whether it was proper for the learned judge to decide that the contract of purchase of the suit house had been declared a nullity in **previous proceedings, Probate Appeal No. 27 of 2012 and Pc. Probate Appeal No. 16 of 2012 in which the applicant was neither a**

party thereto nor afforded any opportunity to be heard (the underline is mine).

Having adopted contents of the respondents' counter affidavit, on replay, Mr. Adam Robert learned counsel submitted that the application fell short of merits because whether or not the applicant wasn't a party to the proceedings where, in effect the sale agreement was nullified, throughout the issue had not been the contentious one that it therefore was now misplaced (cited Section 5(2)(c) of the Act also the case of the **Elisa Moses Lusasi v. Yesaya Ngatemi Marko** (1990) TLR 90 (CA) much as he agreed on the need for certification on a point of law for a 3rd appeal (the case of **Saidi Ramadhani Mayenga v. Abdallah Salehe** (1996) TLR 74 and that leave was grantable only where a point of law was involved.

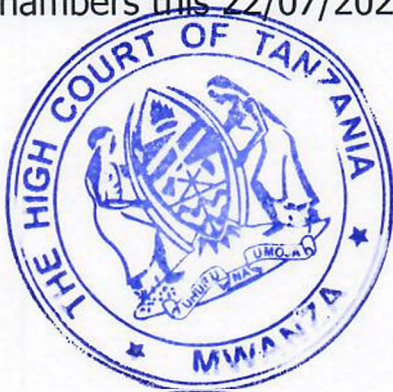
Looking at the entire record and the historical back ground of the matter, the central issue is no longer; **(1)** Whether for same reasons one Benjamini Tosiri, initially administrator of the estate have had the letters granted to him been revoked by the probate Mwanza Urban Primary Court **(2)** Whether, from the outset the applicant alleged to have purchased the house from the said Benjamini Tosiri or **(3)** Whether the purported sale, by

order of court long ago declared null therefore of no legal effects, but natural/basic as it was rather, as to whether or not with respect to the alleged sale the purported vendor and purchaser, the said Benjamini Tosiri was fairly heard (the case of Mbeya Rukwa Auto Parts & Transport Ltd v. Jestina George Mwakyoma, Civil Appeal No. 45 of 2000 (CA) unreported, my learned sister judge's findings were still there, and I am mindful of the legal principle that the instant application wasn't rehearing of the appeal in disguise. The issue, for instance whether or not the vendor had a title to pass to the applicant it is no subject of the instant application.

In the up short, the application is granted. Each party shall bear their costs given the nature of the application. It is so ordered.

S.M. RUMANYIKA
JUDGE
18/07/2021

The ruling delivered under my hand and seal of the court in chambers this 22/07/2021 in the absence of the parties.



S.M. RUMANYIKA
JUDGE
22/07/2021