

IN THE HIGH COURT OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA

MISC. LAND APPLICATION NO. 68 OF 2021

(Arising from decision of the High Court of Tanzania at Mwanza in Land Appeal No. 60 of 2020, Originating from decision of the District Land and Housing Tribunal for Geita at Geita in Land Application No. 52 of 2018)

FAIDA LUNSALYA.....APPLICANT

versus

- 1. AGNES K. LUKANDA (The Admin.
of the Estate of the late Lunsalya Ndebe)**
- 2. JUMA BANOBI**
- 3. MLEKWA BANOBI**
- 4. YAYESU BANOBI**
- 5. RASHID BANOBI**
- 6. MHOZYA LUNSALYA**
- 7. MATESO BANOBI**
- 8. SIZYA LUNSALYA**
- 9. MIKA BANOBI**
- 10. NYAMAKALE MTAA EXECUTIVE OFFICE**

.....RESPONDENTS

RULING

16th & 30th August, 2021

RUMANYIKA, J.:

With respect to judgment and decree dated 21/06/2021 of this court (Mashauri, J), supported by affidavit of Faida Lunsalya (the applicant) the application for leave for the latter to appeal to the Court of Appeal of Tanzania was brought under S. 47 (2) of the Land Disputes Courts Act Cap.

216 RE. 2019) the applicant had service of Mr. Ng'wanzalima learned counsel. Agness K. Lukanda (Admin of the estate of the late Lunsalya Ndebe) and 9 Others (the respondents).

When, by way audio teleconference the application was called on 16/08/2021 for hearing, Messrs Ng'wanzalima and Linda learned counsel appeared for the applicant and respondents. I heard them through mobile numbers, 0765 299 508 and 0745 384 316 respectively.

Very briefly, Mr. Ng'wanzalima learned counsel submitted that the 4 points by way of appeal now sought to be determined by the Court of Appeal of Tanzania were; **One;** that this court failed to properly evaluate the evidence on record more so exhibits P1 and P2. **Two;** that having had failed to identify the entire estate to be administered, the present applicant trespassed onto the third party's land. **Three;** that in fact the said administrator in Probate Cause No. 57 of 2014 did not sufficiently dispose of the disputed land. As it was related to number 3 materially, the learned counsel just abandoned ground four.

Having adopted contests of the counter affidavit, Mr. Linda learned counsel submitted that; (i) that not only the application raised points of fact (not of law) but also there was not any noble point that raised a point

of general importance by way of appeal determinable by the Court of Appeal of Tanzania (the case of **British Broadcasting corporation v. Erick Sikujua Ng'imalyo....**), (ii) that as point number 6 on time bar of the probate cause wasn't raised before, on that one therefore this court could not be faulted. That is all.


Having had heard the parties, and in the same breath he defined what administrator of the estate was, at page II of the typed judgment my brother judge found and heard:-

... the 1st respondent was sued together with other respondents who are beneficiallies of the deceased Lunsalya Ndebe in the course of distributing the deceased's assets to his personal beneficillies. There is no any trespass done... the respondent's in this matter ... there is no evidence to the fact that, the applicant was given the 7 acres of land during operation vijiji nor is there evidence that he bought the disputed land and from whom ...



Whether or not on that one this court was right, as far as whom between the parties lawfully owned the disputed land was concerned the court was done. However, without running risks of rehearing the appeal or even assuming powers of the Highest fountain of justice, more so on the

issue of whether through probate proceedings, but against 3rd party' rights who is not a beneficiary could be finally determined, this one in my considered opinion it was worth the name noble and that raised a general importance by way of appeal determinable by the Court of Appeal of Tanzania.

When all is said, the meritorious application is respectfully granted with costs. Right of appeal is explained.


S.M. RUMANYIKA
JUDGE
29/08/2021

The ruling is delivered under my hand and seal of the court in chambers this 30/08/2021 in the absence of the parties.


S.M. RUMANYIKA
JUDGE
30/08/2021