

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TANGA DISTRICT REGISTRY)

AT TANGA

MISC. LAND APPLICATION NO. 42 OF 2019

(Originating from decision of the High Court at Tanga in Land Appeal No. 59 of 2018 and decision of Kilindi District Land and House Tribunal at Songe Appeal No. 24 of 2018 arising from the judgment of Msanja Ward Tribunal in Land Case No. 10 of 2016)

HAMISI ALLY KUWI.....APPLICANT

-VERSUS-

SALIMU A. NONGEA.....1st RESPONDENT

ABDALLAH S. MADOYA.....2nd RESPONDENT

RULING

Date of Last Order: 16/02/2022

Date of Judgment: 17/02/2022

AGATHO, J.:

This application for leave to appeal to the Court of Appeal of Tanzania against appeal decision of Mruma J., at the Hight Court of Tanzania, Tanga District Registry at Tanga. The matter originated from the decision of Msanja Ward Tribunal. For that matter, the Applicant requires leave of the Court to appeal to the Court of Appeal of Tanzania on point of law and not on account of facts. This requirement is set by the law under Rule 45(a) of the Court of Appeal Rules of 2009 and

Section 5(1)(c) 2(c) of the Appellate Jurisdiction Act [Cap 141 R.E. 2002].

Therefore, a question to be determined is whether the Applicant's affidavit disclosed any point of law that is worth to be examined by the Court of Appeal of Tanzania? The application was heard on 16/02/2022, where the Applicant submitted that he is praying for leave to file an appeal to the Court of Appeal of Tanzania. The applicant told the Court that he does not want to join the administrator of the estate of the late Madoya (2nd Respondent) in this application. It is not clear why he decided to do so. That may imply he has relinquished his claim against the deceased 2nd Respondent. Nevertheless, in the premise of the present application the Court is required to determine whether the Applicant has shown any point in law to convince it to grant leave to appeal to Court of Appeal.

The Applicant argued that the decision by Mruma J., has illegality that is worthy to be determined the Court of Appeal of Tanzania. The Applicant submitted among other things the allegation that Mr. Rajabu Mngoya prepared and signed the 2nd Respondent's written submissions

on appeal in Land Appeal No. 59 of 2018 which was before this Court. He referred to paragraph 4 of his affidavit, which avers two points:

- (a) That one Rajabu Mngoya reported in the High Court on 14/05/2019 that the 2nd Respondent was sick. Thereafter, the Court gave an order that the parties to file their written submissions in the specified dates. The Applicant alleges that Rajabu Mngoya prepared 2nd Respondent's written submissions in the specified dates. It is the allegation of the Applicant that Rajabu Mngoya prepared the written submissions on appeal, signed, and filed it while he was neither a party nor holding power of attorney.

This point was countered by the Respondents in their counter affidavit as not being a point of law because it requires evidence. It is thus factual issues that cannot be determined by the Court of Appeal of Tanzania. The 1st Respondent also submitted at hearing on 16/02/2022 that the reply to Appellant's written submissions were not prepared by Mr. Rajabu Mngoya, they were prepared by Madoya (2nd Respondent). However, Mr. Madoya due to his old age he was advised to ask one of his relatives to represent him. The 2nd Respondent appointed Rajabu

Mngoya to be his representative and also wrote a letter to the Court to that effect. The Applicant disputed this argument, and said Madoya was not very old, and that Mngoya was not appointed to represent the 2nd Respondent before his death. The Court perused the records of proceedings and found no record of Mr. Mngoya to be formally appointed as representative of the 2nd respondent. However, on the date of hearing Mr. Mngoya was already formally appointed the administrator of the estate of the late Madoya's estate.

Having heard the parties, submissions, and looking at the Court records, I find the Respondents' arguments to be convincing. It is the trite law that when illegality it should not be a matter requiring evidence. It should be apparent on the face of record as it was held in **Principal Secretary v. Devran Vallambia [1991] TLR 287**. But in the present application the allegation raised by the Applicant is of fact and indeed it requires evidence to be substantiated. While locus standi is both a matter of substance and procedure, and hence a point of law, but in the circumstance of this case it requires evidence. The Applicant allegations were not raised during hearing of the Appeal before Mruma, J. Moreover, the Applicant did not supply this Court with such evidence to prove that Rajabu Mngoya did prepare, sign, and file the written

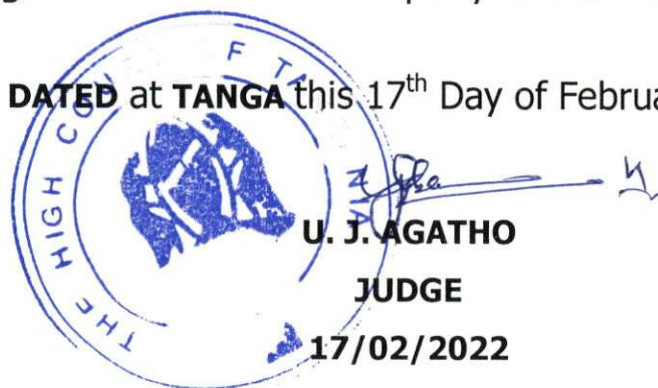
submissions. Looking at Paragraph 4 of the Applicant's affidavit, it contains mere assertions. Moreover, the issue of Rajabu Mngoya signing the Respondent's written submissions was not raised at High Court on the appeal determined by Mruma J. I have checked the record of appeal proceedings before this Court. There is nowhere the issue of Rajabu Mngoya signing or preparing the written submissions for the 2nd Respondent was raised. Moreover, the signatures seen on the Respondents reply to Appellant's written submissions are those of the 1st Respondent (Salimu A Nongea), and 2nd Respondent (Abdallah S Madoya). Consequently, it makes the allegation to be untenable and sounds like an afterthought. And since that point was not raised on appeal at the High Court, I find it to carry no substance.

(a) The 2nd reason or justification for seeking leave to appeal to the Court of Appeal of Tanzania is that of jurisdiction (pecuniary jurisdiction) of the Ward Tribunal. The Applicant alleged that the size of the suit land is 30 acres whether that is within the pecuniary jurisdiction of the Ward Tribunal which is vested with pecuniary jurisdiction of land whose value does not exceed TSH. 3,000,000/= (three million Tanzania shillings) only. While jurisdiction is a point of law, in the present application the matter

was rightly determined by Mruma J. I should reiterate the holding of the learned justice Mruma J., in the appeal judgment of 5/7/2019 at pp. 3, 4, 5 and 6 that pecuniary jurisdiction in land disputes is not established by the size of the plot or suit land. Rather it is established by the value of that suit land. In absence of evidence or record to show that the value of the suit land to be exceeding TSH. 3, 000,000/= the Court is entitled to assume that the value does not exceed TSH. 3,000,000/=. After all, it was the duty of the Appellant (Applicant) to prove that the value exceeds TSH. 3,000,000/= which he failed to do so. I entirely agree with Mruma J's holding. I would add that he who alleges must prove as stated under Section 110 of the Evidence Act [Cap 6 R.E. 2019].

For the foregoing reasons I find the Application for leave to appeal to the Court of Appeal of Tanzania is lacking requisite point of law to warrant its grant. I dismiss it. Each party to bear its costs.

DATED at **TANGA** this 17th Day of February 2022.



Date: 17/02/2022

Coram: Hon. Agatho, J

Appellant: Present

Respondent: Present

B/C: Zayumba

Court: Judgment delivered on this 17th day of February, 2022 in the presence of Ally Kuwi (the Applicant), and Nongea the 1st Respondent, and Rajabu Mngoya, representative of deceased 2nd Respondent.

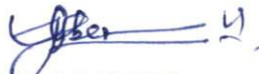


U. J. AGATHO

JUDGE

17/02/2022

Court: Right of Appeal fully explained.



U. J. AGATHO

JUDGE

17/02/2022