

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. LAND APPLICATION NO. 103 OF 2021

(Emanating from Land Appeal no 15 of 2021 in the High Court of Tanzania at Mwanza)

NJILE MAHANYAAPPLICANT

versus

PIMILE FABIANRESPONDENT

RULING

18th Dec, 2021 & 17th January, 2022.

RUMANYIKA, J;

With respect to judgement and decree of this court dated 18/10/2021, the two-fold application for a certificate on point of law and leave to appeal is brought under Section 47 (2) and (3) of the Land Disputes Courts Act Cap 216 RE. 2019. It is supported by affidavit of Ihard E. Mushongi learned counsel for Njile Mahanya whose contents he adopted during audio teleconference hearing of 08/12/2021. Mr. L.S. Lugakingila learned counsel appeared for Pimile Fabian (the respondent). I heard them through mobile numbers 0764 463 958 and 0713 916 626 respectively.

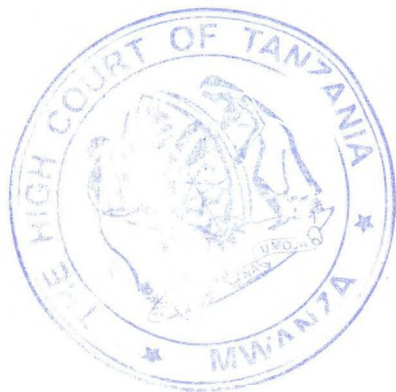
Mr. Inhard Mushongi learned counsel submitted that the points sought to be certified were as per paragraph 5 of the supporting affidavit:-

- (1) Whether any person other than an administrator of the estate could, on behalf of the deceased sue or be issued.
- (2) Whether ownership of land can be proved orally.
- (3) Whether from its inception the matter was time barred.
- (4) Whether oral sale agreement on land was recognized in law.
- (5) Whether, according to the rule in the cases of **Abually Alibhai Aziz v. Batia Brothers** (2000) TLR 288 and **The Registered Trustees of Holy Spirit Sister Tanzania v. January Kamili Shayo & 136 others**, Civil appeal No 163 of 2016 (CA) at Arusha (unreported) the doctrine of adverse possession was properly invoked.

Ms. L.S Lugakingila learned counsel submitted that point number one raised only depended on the obtaining circumstances of each case therefore the present case was distinguishable (see the case of **Amina Athuman v. Hadija Mohamed Ninga**, Land Appeal No 36 of 2013 Hc at Tabora (unreported) much as, with respect to the disputed land the applicant had no title nor was he an administrator of the estate (case of

was sale of the disputed land if yes, its form, not only by all standards the issue was factual but also this court found none. The point therefore is respectfully out of place.

When all is said, the devoid of merits application is bound to fail. It is dismissed with costs.



S. M. RUMANYIKA
JUDGE
20/12/2021

Date: 17/01/2022

Coram: A.W. Mmbando – DR


Applicant: Mshongi Advocate

Respondent: Leticia Sabasi Advocate

B/C: Martina R. Nelei – RMA

Court: Ruling delivered this 17th January, 2022 in the presence of both sides as indicated above.




A.W. MMBANDO
DEPUTY REGISTRAR
17/01/2022