

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MWANZA DISTRICT REGISTRY**

**AT MWANZA**

**MISC. LAND APPLICATION No. 39 OF 2022**

*(Arising from Land Appeal No. 02/2021, originating from Land Application No. 15/2017 in the District Land and Housing Tribunal for Geita at Geita)*

**TIBA ALPHONCE** (Administrator of the  
Estate of the Late Wahalalika Siyonka) ..... **APPLICANT**

**Vs**

**SERIKALI YA KIJIKI KARUMO** ..... **RESPONDENT**

**RULING**

12/5/2023 & 26/5/2023

**ROBERT, J:-**

The applicant, Tiba Alphonc, filed this application in his capacity as the administrator of the estate of the late Wahalalika Siyonka seeking leave of this Court to appeal to the Court of Appeal of Tanzania against the decision of this Court in Land Appeal No. 02 of 2021. The application is grounded on the reasons stated in the affidavit sworn by the applicant in support of this application.

When this application came up for hearing, the applicant was represented by Mr. Emmanuel John, learned counsel whereas the Respondent enjoyed the legal services of Mr. John Mwanga, State Attorney

Submitting in support of this application, Mr. John contended that the application is grounded on ten issues stated at paragraph 7 of the applicant's affidavit which needs to be brought to the attention of the Court of Appeal of Tanzania.

Starting with the 10<sup>th</sup> issue, regarding participation of assessors. He submitted that, at page 19 of the impugned judgment of this Court, the Hon. Judge refused to deliberate on the effect of non-participation of assessors in the decision of the trial Tribunal. He maintained that failure to consider opinion of assessor is fatal.

On the 9<sup>th</sup> issue regarding a visit to the locus in quo, he argued that while at page 9 and 10 of the impugned judgment the Hon. Judge decided that the trial Tribunal was not justified to do away with its initial order of visiting the *locus in quo*, yet the decision of this Court did not allow parties to visit the locus in quo and the trial Tribunal to write another Judgment thereafter. Hence, the order to visit the locus in quo is still intact and not vacated.

On the 8<sup>th</sup> issue which faults this Court for applying double standard rule by adopting procedural rules in one aspect and deny application in another aspect. He argued that, at page 9 and 10 of the impugned judgment, the Hon. Judge discussed the importance of visiting locus in

quo. However, when talking about assessors at page 19 he said procedural aspect is useless. The Court of Appeal of Tanzania need to decide if it was proper to make that determination.

Coming to the 6<sup>th</sup> issue, he submitted that, at page 11 of the impugned Judgment the Hon. Judge said ownership of the village land during 1970's belonged to the village Government. He argued that in those years some parcel of the land belonged to independent individual persons. Hence, the assumption by the Hon. Judge denied the applicant his right.

On the 5<sup>th</sup> issue, he submitted that the question which needs determination by the Court of Appeal is whether the transfer of the deceased's landed property located in rural areas needs to strictly comply with the law governing administration of the estate before its actual transfer. He referred this Court to the case of **China Chacha Malawa vs Serikali ya Kijiji Nyankanga**, High Court Land Case No. 78/2018, HCT at page 15 where the Court decided that in rural life there is no need for a deed of gift to be produced to establish transfer of property as a gift.

He opted to drop the 3<sup>rd</sup> and 4<sup>th</sup> grounds.

On the 2<sup>nd</sup> ground, he submitted that evidence adduced was sufficient to prove the case against the respondent.

On the basis of the reasons stated, he prayed for the application to be allowed.

In response to the 10<sup>th</sup> and 1<sup>st</sup> grounds, Mr. Mwanga, submitted that the Hon. Judge indicated at page 18 of the proceedings that the applicant was supposed to prove ownership which is substantive than the issue of procedure. Further to that, he argued that the decision of the DLHT was given in favour of the applicant. Thus, if there was a procedural irregularity it would affect the decision which was given in favour of the applicant and not the respondent.

On the 9<sup>th</sup> ground, he argued that the court having made a finding that the applicant failed to prove ownership there was no need to visit the locus in quo. He maintained that, the order of the DLHT is already quashed and therefore there is no pending order in place.

On the 8<sup>th</sup> issue, he responded that there was no double standard. He clarified that, the court was right to decide that there was no need of dealing with procedural aspects in respect of assessors because the substantive aspect of the case was already proved.

Responding on the 6<sup>th</sup> ground, counsel for the respondent argued that the Hon. Judge was right because the village has the right to oversee

the land in the entire village. The applicant did not bring any evidence to establish ownership of the land in question.

On the 5<sup>th</sup> issues, we submit that, the laws relating to probate have been in place since 1960's and the dispute in question arose in 2017. Therefore, there is no reason why the dispute in question would not comply with the existing laws. He maintained that, the cited cases are irrelevant.

On the second ground, he submitted that, he is in agreement with the decision of the court since the applicant failed to prove how he acquired ownership of the disputed land. He contended that, the the applicant's argument that evidence adduced was sufficient has no legal basis.

On that basis, he prayed that the application be dismissed without costs because it is a conflict between the villager and the Local Government.

In a brief rejoinder, Mr. John argued that, with regards to visiting of locus in quo, it should be noted the Hon. Judge decided that it was necessary to visit the locus in quo. He was therefore required to direct the trial court to visit the locus in quo and write another Judgment. Even if the trial court Judgment favoured the applicant it was important that the

decision should have considered what the law requires. He maintained that this position applies to the issue of assessors as well.

Having heard the submissions from the parties, the Court must now determine whether there is merit to this application. To grant this application, the Court must be satisfied that the intended appeal raises a novel point of law or there is a *prima facie* or arguable appeal that warrants the attention of the Court of Appeal. See the cases of **Rutagatina C.L v The Advocates Committee and another**, Civil Application No. 98 of 2010, CAT (unreported) and **Abubakari Ally Himid v Edward Nyalusye**, Civil Application No. 51 of 2007, CAT (unreported)..

The ten issues raised by Mr. John encompassed matters such as the participation of assessors, the need for a visit to the locus in quo, the application of procedural rules, the assumption of land ownership during the 1970s, and the requirements for the transfer of the deceased's landed property. These issues appeared to involve points of law and their proper interpretation, which is alleged to have not been conclusively addressed by this Court. Moreover, the resolution of these issues could have implications beyond the present case, potentially affecting other land dispute matters. The issues raised are of general importance and warrants the attention of the Court of Appeal.

On the issue of the effect of Non-Participation of Assessors, the Court considered the contention made by the applicant's counsel that the Hon. Judge failed to deliberate on the effect of non-participation of assessors in the decision of the trial Tribunal. The Court considers that the applicant had raised a legitimate concern about the failure to consider the opinion of the assessors, which could potentially impact the validity of the judgment. Therefore, this issue presented an arguable ground for appeal.

On the need for a Visit to the Locus in quo, the Court carefully examined the arguments raised by the applicant's counsel regarding the necessity of a visit to the locus in quo. While this Court had decided that the trial Tribunal was not justified in doing away with its initial order for such a visit, the Court found that the decision did not clarify whether parties were allowed to visit the locus in quo and the trial Tribunal to write another judgment thereafter as alleged by the applicant. This issue raises a valid question about the procedural aspect of the case. As such, the issue of whether the order to visit the locus in quo was still intact or vacated presents an arguable point for appeal.

Coming to the application of Double Standard Rule, the Court considered the applicant's argument that the lower court applied a double standard rule by adopting procedural rules in one aspect (visiting the locus



in quo) and denying its application in another aspect (regarding assessors). Hence, the issue of whether there was a double standard in this case, as asserted by the applicant, presents a debatable legal question that needed the attention of the Court of Appeal for resolution.

On the Ownership of Village Land During the 1970s, the Court examined the contention made by the applicant's counsel that the lower court's assumption that ownership of the village land during the 1970s belonged to the village Government denied the applicant his right. The Court notes that the applicant raised a substantial concern about the lower court's characterization of ownership during the 1970s, and the Court found that it warranted further examination at the appellate level.

With regards to Transfer of Deceased's Landed Property, the Court considered the applicant's submission regarding the transfer of the deceased's landed property located in rural areas and the need to strictly comply with the law governing the administration of the estate before its actual transfer. The Court noted that the applicant referred to a relevant case, **China Chacha Malawa vs Serikali ya Kijiji Nyankanga (supra)**, where the Court addressed a related issue. The Court recognized that the interpretation of laws governing probate and transfer of property in rural areas was a significant legal question that could affect




similar cases. Hence, the Court found that the issue of compliance with the law governing administration of the estate presented an arguable ground for appeal.

In light of the above reasons and the principles established in previous cases, the Court concludes that the applicant has demonstrated that the intended appeal raises arguable issues of general importance and novel points of law. Therefore, the Court grants leave to the applicant to appeal to the Court of Appeal of Tanzania against the decision of this Court in Land Appeal No. 02 of 2021.

It is so ordered.



  
K.N. ROBERT  
JUDGE  
26/5/2023