

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT TABORA

MISCELLANEOUS LAND CASE APPLICATION NO. 58 OF 2013

AGNESS SENGEREMAAPPLICANT

VERSUS

MAGESE KADAMA AND ANOTHERRESPONDENT

RULING

13th March & 30th April, 2014

RUMANYIKA, J

The application is for setting aside an order dated 09.09.2013. Dismissing appeal no. 42 of 2011. But as was just set to hear it on 13/03/2014, I had to determine a three – ground preliminary points of objection (p.o). Formerly raised on 23/12/2013, by Mr. Musa Kassim, learned counsel for the Respondents. That the application was incompetent, therefore bad in law for three (3) reasons:- (1) wrong, and or non citation of the law under which the matter was brought (2) the supporting affidavit contains a defective jurat of attestation (3) copy of order being sought to be set aside not attached to the application.

Mr. F. Kweka learned counsel appears for the applicant.

The learned counsel were agreed, and argued the matter by way of written submissions.

Like Mr. Musa Kassim had abandoned the last two limbs of the p.o, I will treat the counsel's submissions as such. Nevertheless, suffices by itself the 1st limb to dispose of this application. Counsel submits that, whereas the application was supposed to be brought under Order XXXIX rule 19 of the Civil Procedure Code Cap 33 R.E 2002 (CPC), one had brought it under Rule 112 (2) and (3) of the Court of Appeal rules, 2009 (GN No. 368 of 2009), under section 78 and Order XLII of the CPC, and such other enabling provisions of the law. The learned counsel contends therefore, that the application was, on that basis, incompetent. Liable to be struck out with costs. He cited the Cases of Commissioner General Tanzania Revenue Authority V PPF, Civil Application No. 73 of 2005 (CA) And Zuberi Mussa V Shinyanga Town Council, Civil Application No. 100 of 2004 (CA) submitted the learned counsel.

Mr. Kweka submits: (1) that the p.o had been taken against him within short notice (2) cited by him was correct provisions of the law (3) courts not be tied up with legal technicalities.

Infact it can not be said, as Mr. Musa puts it, that the Applicant's counsel had cited no law. He cited some! Whether or not the cited

ones were wrong provisions of the law, it is the issue for determination.

No doubts the provisions of Rule 112 (2) and (3) of the court of Appeal rules 2009 can not go beyond the intended borders. The law caters only for the proceedings in the court. The "court", according to rule 3 of the said rules, is defined as;

The court of Appeal of the United Republic of Tanzania established by the constitution, and includes any division of that court and a single judge exercising any power vested in him sitting alone.

Section 78 and Order XLII of the CPC concern only with the review proceedings. Completely not connected any how to this kind of application.

The above three provisions of the laws were, as said by Mr. Mussa Kasim, wrongly cited. Hence wrongly moving this court. It renders the incompetent application liable to be struck out with costs. On this one, the highest fountain of justice in the country observed in the case of Marwa Maseke V R. Criminal application No. 1 of 2005: ".....the court must be moved to act by citing the relevant provisions of the law granting the court authority to entertain the matter it is