

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SLAAM

MISC LAND APPLICATION NO. 137 OF 2020

(Arising from Land Appeal No. 74 of 2018 as per Hon. Makani, J)

ABDALLAH MRISHO NGWAMBI.....APPLICANT

VERSUS

HAMADI ALLY SOGO.....RESPONDENT

RULING

I. MAIGE, J

This is an application for leave to appeal to the Court of Appeal of Tanzania (“CAT”) against the decision of this Court on Land Appeal No. 74/2018 dismissing the applicant’s appeal for want of merit.

The instant application is made under section 47(1) of the Land Disputes Courts Act, Cap. 216 R.E. 2002, (henceforward “LDCA”) and is supported by the affidavit of **Mr. Kiondo Mtumwa Rajab**, learned advocate for the applicant. It has been opposed by the counter affidavit of advocate **PATRICIA PIUS MBOSA** for the respondent.

In his written submissions, Mr. Kiondo adopted the facts in the affidavit and invited the Court to hold that, the affidavit demonstrate serious points of law and facts deserving the attention

of the Court of Appeal. The first point, he submits, is on the locus. He clarifies that, while the respondent instituted a claim at the trial tribunal in his individual capacity, during trial he told the trial tribunal that, he was litigating in his capacity as the administrator of the estate of the late Asha Binti Shomari. That aside, the counsel further submits, the respondent never tendered any letters of administration to substantiate his representative capacity. He submits further that, since *locus standi* is a fundamental legal issue which affects the court jurisdiction, it can be raised at any time. In the view of the learned counsel, this Court ought to have not dismissed the appeal without that issue being taken into account.

On the second point, it is Mr. Kiondo's submission, that, while the evidence of the appellant at the trial tribunal was such that he had been in occupation of the suit property without interruption for about 28 years, this dismissed the appeal without considering the issue of time limitation. He therefore urges the Court to grant the application with costs.

In his rebuttal submissions, Miss Mariam Kapama informed the Court that, the court record indicates that the letters of administration was admitted. In the alternative, she submits that, as the issue was not raised as a ground of appeal, it cannot be the basis for this application. He referred the Court to the authority in **James Funke Ngwagilo vs. AG_(2004), TLR 161** where it was held that, *"In order for the issue to be decided it ought to be brought on record and appear from the conduct of the suit to have been left to the court for the decision"*.

On the second issue, it is the counsel's submissions that, the appellant failed to produce sufficient evidence to establish prior adverse possession of the suit property for over 28 years. She thus invites the Court to dismiss the application with costs.

I have examined the affidavit and counter affidavit and duly considered the rival submissions. In accordance with the authority in **British Broadcasting Corporation vs. Eric Sikujua Ng'amaryo, Civil Application No. 138 of 2004** the main issue which I have to resolve is whether the points involved in the intended appeal are not "*frivolous, vexatious or useless or hypothetical*".

The first point involved is that of *locus standi*. It appears not to be in dispute that, the respondent instituted a claim at the trial tribunal in his individual capacity. It is also not in dispute that, in accordance the evidence on the record, the respondent was claiming the suit land as a legal representative of the late Asha Binti Shomari. The counsel for the applicant submits that, the letters of administration was not exhibited into evidence. The counsel for the respondent submits that it was. I cannot comment on who is right and who is not at this particular stage.

On the same point, there was a hot debate on whether the issue of *locus standi* can be the basis for the grant of the application while it was not in the grounds of appeal. For the applicant, it was submitted that, there is no estoppel on the point of jurisdiction. To the respondent, it was submitted in the vice versa. The issue, the way I see it, goes to the grounds of the intended appeal. I do not think that, this Court is authorized at this stage, to deal with it. However, that would be an indication that there are some serious issues justifying the attention of the Court of Appeal.

On the second point, parties have exhibited a controversy on the issue of adverse possession. Mr. Kiondo contends that the defense evidence at the trial tribunal suggested that, the respondent had been in adverse possession of the suit property for about 28 years. Miss Mariam takes it that, the defense evidence on that issue was

too weak to establish the defense of adverse possession. Apparent from the rival submissions is that, the contention under discussion is not unfounded on the evidence on the record. The debate is on the assessment and application of the evidence by both the trial tribunal and this Court as the first appellate court. Parties are not in agreement on the proof of the elements of the defense of adverse possession. In the circumstance, I think, the issue raised is neither frivolous nor vexatious. It entails a serious question of law and fact which deserve attention of the Court of Appeal. Accordingly, therefore, leave to appeal to the **CAT** against the judgment and decree of this Court in Land Appeal 74 No. 46 of 2018 is hereby granted with costs.

It is so ordered.

A handwritten signature in black ink, appearing to read 'I. Maige', with a stylized flourish at the end.

JUDGE

16/10/2020

Date: 16/10/2020

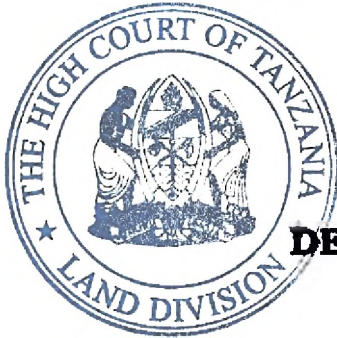
Coram: Hon. C. Tengwa - DR


For the Applicant: Kondo, Advocate

For the Respondent: Jeston Justine, Advocate

RMA: Bukuku

COURT: Ruling delivered today in the presence of the both parties.




C. Tengwa

DEPUTY REGISTRAR

16/10/2020