

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

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC LAND APPLICATION NO. 256 OF 2020**

*(Arising from Land Appeal No. 86 of 2018 as per Hon. Mansoor, J)*

**HAMIS SULTAN MWINYIGOHA.....APPLICANT**

**VERSUS**

**ZAINABU SULTAN MWINYIGOHA as Administratrix  
Of the late SULTAN MWINYIGOHA.....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 in Land Appeal No. 86/2018. In the said decision, this Court reversed the decision of the trial tribunal declaring the applicant herein the lawful owner of the suit property. It instead, nullified the sale agreement in exhibit D1 and declared the respondent herein the lawful owner of the **suit property**.

The applicant is not pleased with the decision. He has thus initiated the instant application under section 47(1) of the Land Disputes Courts Act, Cap. 216 R.E. 2002, (henceforward “LDCA”). The respondent has deposed a counter affidavit to contest the application.

The application was disposed of by written submissions. In his submissions in support of the application, Mr. Job Kerario, learned advocate submitted that, the affidavit demonstrate some serious questions which require attention of the Court of Appeal. He submitted further that, contrary to what this Court decided as the first appellate court, there was enough and better evidence before the trial tribunal establishing ownership of the applicant on the **suit property**. He therefore invites the Court to grant the application.

Mr. Cyprian William learned advocate for the respondent submits in the vice versa. He submits that, the application is devoid of any merit and ought to be dismissed with costs.

I have considered the rival submissions in line with the affidavit and counter affidavit. It is appropriate that I consider the merit or otherwise of the application. What the Court should take into account before granting leave was considered in **Saidi Ramadhani Mnyanga vs. Abdallah Salehe (1996), TLR**, where it was held that, leave to appeal will be granted if the applicant demonstrates substantial issues that call for the attention of the Court of Appeal. It cannot, as held in **British Broadcasting Corporation vs. Eric Sikujua Ng'amaryo, Civil Application No. 138 of 2004** be granted "*where the grounds of appeal are frivolous, vexatious or useless or hypothetical*".

In this dispute, the respondent was successful at the trial tribunal. The trial tribunal was impressed by the sale agreement in exhibit D1 to establish ownership of the suit property by the applicant. On critical reappraisal of the evidence adduced, this Court as the first

appellate court was satisfied that the sale agreement and other documents relied upon by the applicant to establish title on the suit property were fabricated. It thus nullified the sale and declared the respondent the lawful owner of the suit property. The applicant and his counsel doubts the factual finding of this Court on appeal. He believes that the trial tribunal correctly assessed the evidence. The respondent supports the factual finding of this Court. In the circumstance, I do not think that the intended appeal by the applicant is frivolous and vexatious. It raises a genuine factual issue which justify a second appeal to the Court of Appeal namely; whether the sale of the suit property to the applicant was fraudulent. Accordingly therefore, leave to appeal to the **CAT** against the judgment of this Court on appeal is hereby granted with costs.

It is so ordered.



I. Maige

**JUDGE**

**16/10/2020**

**Date: 16/10/2020**

**Coram:** Hon. C. Tengwa - DR

For the Applicant: Present

For the Respondent: Miss William, Advocate

**RMA: Bukuku**

**COURT:** Ruling delivered today.



C. Tengwa  
**DEPUTY REGISTRAR**  
**16/10/2020**