

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 460 OF 2019

(Arising from the decision of this Court (Hon. Ipiyo, J) in Land Appeal No. 144 of 2019)

FARIDI OMARY MPILI.....APPLICANT

VERSUS

WENCESLAUS WILLIAM ISHENGOMA.....RESPONDENT

RULING

I. MAIGE, J

This application is preferred under section 47(2) of the Land Courts Disputes Act, Cap. 216, R.E., 2019. It is for leave to appeal to the Court of Appeal against the decision of this Court in Land Appeal No. 144 of 2019 (Hon. Opiyo, J). The application is supported by the affidavit of the applicant which was opposed by the counter affidavit of the respondent.

The decision sought to be challenged to the Court of Appeal was delivered on 3rd August 2020. In accordance with the facts in paragraph 3 of the affidavit, until on 21st day of August 2020 when she was filing the instant matter, the applicant had not yet procured a copy of the judgment. She had however already lodged a notice of appeal and a letter requesting to

be supplied with a copy of the judgment and proceedings for the purpose of the intended appeal.

The applicant is unrepresented and she is therefore prosecuting her application in person. Mr. Samson Mbamba, learned advocate, represents the respondent. By the direction of the Court, the merit or otherwise of the application was addressed by way of written submissions.

In her written submissions, the applicant has adopted the facts in the affidavit and invited the Court to hold that, there is a serious question involved in the intended appeal which deserves the attention of the Court of Appeal to wit; whether it was legally correct for the deceased estate to be disposed of before appointment of the administrator.

In item (a) of paragraph 2 of the affidavit, the applicant blames this Court in confirming the decision of the trial tribunal declaring the respondent the lawful owner of the suit property despite the sale of the suit property being made by a person who was not an administrator to the deceased estate.

In his submissions in reply, Mr. Mbamba has dedicated much of his time in assisting the Court on what should be considered in deciding whether to grant or not the application. He submitted, correctly in my view that, the guiding criteria for grant of leave to appeal is whether there are arguable issues fit for consideration by the Court of Appeal. The Court was referred to the decision in **Alisum Properties Limited vs. Selenda Msangi, Miscellaneous Land Application No. 20 of 2016 (High Court, Commercial Division-Unreported)** where His Lordship Mwandambo, as he then was, dealing with a similar issue observed as hereunder:-

"...I have no jurisdiction to go into merits or deficiencies of the judgment or orders of my sister judge in this application. All that I am required to determine is whether there are arguable issues fit for the consideration of the Court of Appeal..."

Having submitted as such, the learned senior counsel invited the Court to determine the application in light of that principle. I recommend the counsel for exhibiting a high level of professional maturation. He appears to have taken cognizance of the fact that, the applicant is an unrepresented layperson and that, as an advocate, he has not only a duty to his client but more importantly to the Court and Justice.

Having so remarked and upon consideration of the factual deposition in paragraph 2 of the affidavit in the line with the authority just referred, I entertain no doubt that, the affidavit demonstrates existence of arguable issue that deserves attention of the Court of Appeal namely; *whether it was legally correct for the deceased estate to be disposed of prior to appointment of an administrator.*

In the final result and for the foregoing reasons therefore, the application is granted. In the circumstance, I will not give an order as to costs.

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

I. MAIGE

JUDGE

16/04/2021

Date 16/04/2021

Coram: Hon. S.H. Simfukwe - DR.

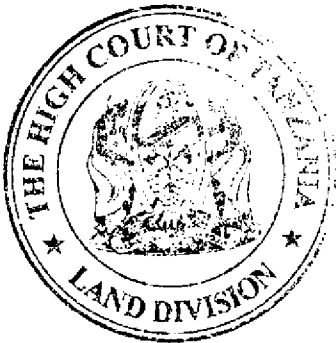
For the Applicant: Present in person

For the Respondent: Ms. Aziza Msangi, Advocate

RMA: Bukuku

COURT:

Ruling delivered this 16th day of April, 2021 in the presence of Applicant in person and Ms. Aziza Msangi learned counsel for the Respondent.




S.H. Simfukwe
DEPUTY REGISTRAR
16/04/2021

**MAHAKAMA KUU YA TANZANIA
(DIVISHENI YA ARDHI)**

MISC. LAND CASE APPLICATION NO. 460/2019

*(Yanatokana na Maamuzi ya Mahakama hii katika rufaa No. 144 ya 2019 Mbele ya
Mheshimiwa Opiyo, J)*

FARIDI OMARY MPILI.....MUOMBAJI

DHIDI YA

WENCESLAUS WILLIAM ISHENGOMA.....MJIBU MAOMBI

MUHTASARI WA MAAMUZI MADOGO

I. MAIGE, J

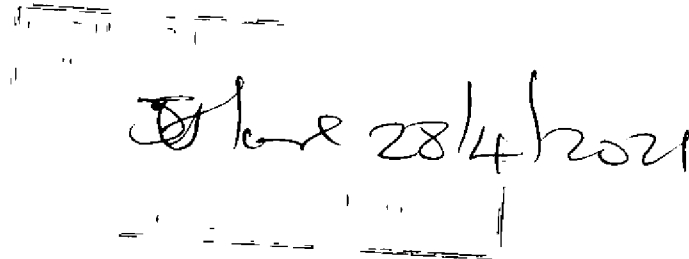
Haya ni maombi ya nyongeza ya muda kuomba rufaa ya mahakama hii kuomba rufaa katika mahakama ya rufaa dhidi ya maamuzi ya mahakama hii katika shauri la rufaa Na.144 la 2019 la 03/08/2020 mbele ya Mheshimiwa Opiyo, J. Inasemekana hadi kufikia 21/08/2020 wakati wa kuwasilisha maombi haya mwombaji alikuwa bado hajapata nakala yake ya hukumu, licha ya kuwa tayari ameandika barua ya kuomba kupatiwa hukumu na mwenendo wa shauri. Mwombaji anataka kujua ikiwa ni sahihi mali ya marehemu kuuzwa kabla ya kumteua msimamizi wa mirathi? Ambapo mahakama hii katika hatua ya kusikiliza rufaa ilitamka kuwa mjibu maombi ni mmiliki halali wa mali bishaniwa achilia mbali mali hiyo kuuzwa na mtu asiyekuwa msimamizi wa mirathi. Baada ya kusikiliza pande zote mbili nimekubali maombi ya mrufani kwa sababu:-

- 1.Sababu ya mrufani kuomba rufaa ya mahakama hii kwenda mahakama ya rufaa ina mashiko kisheria kutaka kujua ikiwa ni sahihi mali ya marehemu kuuzwa kabla ya msimamizi wa mirathi kuteuliwa?

**Muhtasari huu umetolewa na,
Ofisi ya Naibu Msajili Mfawidhi wa Mahakama Kuu Divisheni ya
Ardhi**

Angalizo

- 1. Lengo la Muhtasari huu ni kusaidia kuelezea maamuzi ya Mahakama katika lugha rahisi ya Kiswahili.*
- 2. Muhtasari huu ni kwa ajili ya taarifa tu na hivyo hauna nguvu ya kisheria*
- 3. Uamuzi kamili wenye nguvu ya kisheria unapatikana katika tovuti ;
<https://tanzlii.org/tz/judgments>.*


28/4/2021