

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 333 of 2020

MWAMI M. MAGANA *(As an Administrator
of the Estate of the Late IRENE MWAMI)*

APPLICANT

VERSUS

NEHEMIA MCHECHU

RESPONDENT

RULING

S.M MAGHIMBI, J

This is a ruling in respect of an application for leave to appeal to the Court of Appeal against the judgment of this Court in Land Appeal No. 197 of 2018 delivered before Hon. Makani, Judge on 26th May 2020. The application is lodged under the provisions of Section 47 (2) of the Land Disputes Courts Act, Cap. 216 R.E 2002 ("The Act") and is supported by an Affidavit of Mwami M. Magana, the applicant, dated 15th June, 2020. The application has been countered through the Counter Affidavit of Mr. Aliko Harry Mwamanenge, learned Advocate representing the respondent. In this court, the applicant is represented by Mr. Maunda Raphael, learned Advocate. The application was argued by way of written submission.

I have gone through the records of this application and the rival submissions of the parties and the intended grounds of appeal as established by the applicant herein. I am aware that the 2nd appellate

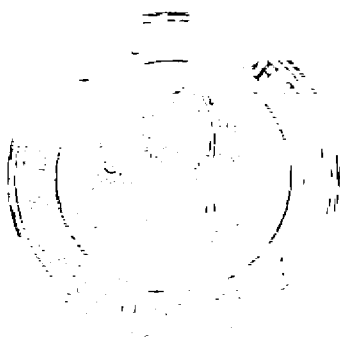
court is rarely allowed to interfere with concurrent findings of the lower court unless there is an issue of law involved. With great caution that before me is not an appeal but an application for leave to appeal to the court of appeal, I still have to take note of the concurrent findings of trial court and this first appellate court hence the issue is whether there are issues beyond the finding on evidence that require the attention of the Court of Appeal.

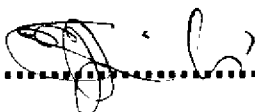
Having analysed the grounds of appeal, I find that the intended first ground of appeal on the issue of impropriety of both donor and donee of power of attorney to give evidence, since it was first raised at the appeal stage is worth getting the attention of the Court of Appeal. Further to that, the 5th ground of appeal is on the competence of the donee of power of attorney to tender a document which, according to the applicant, was not a competent witness to tender those documents. Since this issue was also raised at the appellate stage, it is worth the attention of the Court of appeal.

On those grounds, I allow this application by granting the applicant leave to appeal to the court of appeal against the decision of this court in Land Appeal No. 197/2018. Costs shall follow cause.

Application Allowed

Dated at Dar Es Salaam this 22nd day of February 2021.




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S.M MAGHIMBI
JUDGE