

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC LAND APPLICATION NO. 202 OF 2023
(Arising from Land Appeal No. 261 of 2022, Land Division)

EMMANUEL IKOKI.....APPLICANT

VERSUS

HENRY BUNDALA.....RESPONDENT

RULING

10-14 July, 2023

E.B. LUVANDA, J

This is an application for leave to appeal to the Court of Appeal. In the affidavit, the Applicant stated that after noting discrepancies in the judgment of the High Court, he initiated process of appeal by lodging a notice of appeal and served the same to the Respondent. The Applicant raised the following legal issues that need to be determined by the Court of Appeal namely:

- a) Who is the lawful owner of the suit land between the Applicant and the Respondent.*
- b) Whether there was any legal procedure ever followed in revoking the ownership and re – allocating the same to the Respondent.*

- c) *Whether the suit was referred in court within the time required by law.*
- d) *Whether the principal of adverse procession (sic, possession) applies after the findings that the Applicant has been over the suit land for over 30 years.*
- e) *Whether the suit property belong to the Respondent.*

The application proceeded *ex parte* against the Respondent.

Mr. Frank Kilian learned Counsel for Applicant submitted that the High Court Judge was misguided in material fact of the case and ended up maintaining the decision of the trial Chairman who declared the Respondent the lawful owner of the suit land without taking into consideration that the Applicant was the original owner of the suit land and his ownership was not revoked to enable the Ministry of Land to re allocate the same to the Respondent and the Applicant was not compensated by the Ministry of Land or by the Respondent. He submitted that the Applicant was occupying the suit land since the year 1999, the respondent waited till 2011 to obtain advise of the surveyor and claimed encroachment of 26 metres, but later claimed to be the lawful owner of the whole plot No. 472 Block "E". That the trial (sic, appellate) Judge never considered a fact that no formal procedure of transferring the suit land from the Applicant to the Respondent ever followed. The learned Counsel submitted that, the trial (sic, appellate) Judge

ought to have considered the evidence available and make a finding that even if the Respondent have interest over the suit, the law of limitation prevented the Respondent to claim right over the suit land.

Going through the judgment of this court and on the strength of the issues raised by the Applicant in the affidavit, I hold the view that they are worthy to be considered by the apex Court. Hence the application for leave to appeal is merited.

I therefore grant leave for the Applicant to appeal to the Court of Appeal on the following proposed grounds;

- a) Who is the lawful owner of the suit land between the Applicant and the Respondent.*
- b) Whether there was any legal procedure ever followed in revoking the ownership and re – allocating the same to the Respondent.*
- c) Whether the suit was referred in court within the time required by law.*
- d) Whether the principal of adverse procession (sic, possession) applies after the findings that the Applicant has been over the suit land for over 30 years.*
- e) Whether the suit property belong to the Respondent.*

The application is granted. No order for costs.



E.B. LUVANDA
JUDGE
14/07/2023