

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

PC. CIVIL APPEAL NO. 64/2000

SALUM HUSSEIN APPELLANT

Versus

RAPHAEL MJEMA RESPONDENT

R U L I N G

THEMA, J:

This is an application for leave to appeal to the Court of Appeal of Tanzania against the judgment of this court (Manento, J) dated 1.3.2001 in (PC) Civil Appeal No. 64/2000. The application has been brought under Rule 43 (a) of the Court of Appeal Rules 1979 and Order 43 Rule 2 of the Civil Procedure Code and any other enabling law and as is usual is accompanied by the applicant's affidavit.

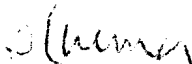
It is deponed by the applicant among others, that there is a point of law which requires the interference of the Court of Appeal. The point of law in the opinion of the applicant is whether a trespasser of a parcel of land can be given ownership. The respondent who was the successful party in this court and the two courts below has opposed the application in his counter affidavit for lack of any point of law.

I have carefully considered the affidavit in support of the application and like the respondent I am satisfied that no point of law has been shown to the exist which merit the certification of this court for determination by the Court of Appeal.

Indeed as correctly pointed out by the learned Advocate for respondent the applicant ^{in his} submission in support of the application has featured new matters which were not raised and decided in this court and the two courts below. It is a clear position of the law that " the Court of Appeal will only look into matters which came up in the Lower Court and were decided (and) not on matters which were not raised nor decided by either the trial court or the High Court on appeal." Vide Elisa Mosses Msaki vs Yesaya Ngateu Matee (1990) T.L. R. 90.

In summary I find no merit in the application for leave to appeal to the Court of Appeal and I dismiss it with costs.

Order accordingly.



S. Thema

JUDGE

COURT: Ruling delivered in the presence of the applicant and
in the absence of the respondent.
Right of Appeal is open.

S. Thema

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JUDGE

11/12/2002