

IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA

MISC. LAND APPLICATION NO. 42 OF 2020

(Originating from Land Appeal no. 1 of 2018 of the High Court of Tanzania at Dodoma
and Land Application No. 7 of 2020 of the District Land and Housing Tribunal for
Kondoa)

ISSA OMARY MAPESA APPLICANT

VERSUS

MOHAMED MUSSA MKWATA RESPONDENT

RULING

30/7/2021 & 23/8/2021

MASAJU, J

The Respondent, Mohamed Mussa Mkwata, successfully sued one Musa Juma Mapesa and the Applicant, Issa Omary Mapesa in Land Application No. 7 of 2010 before the District Land and Housing Tribunal for Kondoa where he was declared the absolute owner of Plot No. 40 Block "V" Kondoa Urban which he bought from Mussa Juma Mapesa, the administrator of the estate of his late father. The Applicant was ordered to surrender the Title Deed thereof to the Respondent and pay him general

damages at the tune of TZS 10,000,000/= and the costs of the suit. The Applicant, unsuccessfully appealed to the Court (Mansoor, J) vide Land Appeal No. 1 of 2018, hence this Application for leave to appeal to the Court of Appeal of the United Republic of Tanzania.

The Applicant's chamber summons Application is made under Section 47 (1) of the Land Disputes Courts Act, 2002 supported by the Applicant's own Affidavit. The Applicant has deponed on the background and the reasons for the Application, including averments in Paragraphs 7 and 9 thus;

"7 That, it was also not proper to issue judgment in favour of the Respondent while the whole procedure was marred by procedural irregularities. The Assessors examined the parties during the proceeding and also, they failed to read their opinion in the presence of the parties as required by the law.

9 That, the Applicant intends to challenge ownership as the case was not proven on balance of probabilities"

The Respondent contests the Application and there is a Counter Affidavit affirmed by himself to that effect. The 3rd and 4th Paragraphs thereof read thus;

"3. That paragraph 7 of the Affidavit in support of the Application is improperly brought given that it was not part of the appeal to the High Court.

4. That, paragraphs 8 and 9 of the Affidavit in support of the Application are not true in that, the exhibits were properly admitted and the issue of reading them over, was properly done that is why it was not raised in the High Court while the Respondent's ownership of the suit house was proved".

When the Application was heard before the Court and the 17th day of May, 2021, the learned counsels, Godfrey Wasonga and Paul Nyangarika appeared for the Applicant and Respondent respectively and argued the application alongside the respective Pleadings by the parties to this Application. The Respondent also advised that the enabling provisions for the Application should have included Section 5 (c) of the Appellate Jurisdiction Act, [Cap 141] and Rules 45 and 46 of the Court of Appeal Rules, 2009 (as amended) and that the Application lacked points of law for consideration by the Court of Appeal of the United Republic of Tanzania. The parties adopted the Affidavit and Counter Affidavit thereof to form part of the submissions in support of, and against the Application respectively. Whilst the Applicant prayed the Court to grant the Application, the Respondent prayed the Court to dismiss the Application.


That said, the Application of this nature to the Court was to be brought to the Court by way of chamber summons Application supported by Affidavit pursuant to order XLIII Rule 2 of the Civil Procedure Code, [Cap33 RE 2019] read together with Section 51 (1) of the Land Disputes Courts Act, [Cap 216 RE 2019]. There is a chamber summons Application supported by Affidavit to that effect. This Court therefore, cannot stand in the way of a litigant who seeks to appeal to the Court of Appeal of the United Republic provided the procedure thereof has been complied with. Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977 (2005 Edition) is categorical on the right of Appeal or other legal remedies against decision of the Court. That is to say, the Court cannot entertain desperate argument intended to prevent an aggrieved party to a dispute from exercising his right to such legal remedies. The Court hereby refrains from being drawn into such legal niceties.

The Court is therefore of the considered position that matters of facts and law raised and attempted by the parties in their Affidavit and Counter Affidavit respectively should find their way into the Court of Appeal of the United Republic of Tanzania by way of the intended Appeal, if any, by the Applicant as per Notice of Appeal annexed to this Application.

This Application for leave to appeal to the Court of Appeal of the United Republic of Tanzania is therefore hereby granted accordingly.

The parties shall bear their own Costs.




GEORGE M. MASAJU

JUDGE

23/8/2021