IN THE COURT OF APPEAL OF TANZANIA

AT ZANZIBAR

(CORAM: OTHMAN, C.J.,KIMARO,J.A. And MUSSA,J.A.)

CIVIL APPLICATION NO. 06 OF 2014

AMEIR MWADINI KIFICHO.....APPLICANT

VERSUS

HAJI MUHARAMI ABDALLA .....RESPONDENT

(Application for leave to appeal against the decision on appeal of the High Court of Zanzibar at Vuga)

(Abraham Mwampashi,J.)

dated the 10th day of June, 2014
in
Civil Appeal No. 17 of 2013

RULING OF THE COURT

7th & 11th December, 2015

MUSSA, J. A.:

This is an application seeking leave to appeal against the decision of the High Court of Zanzibar (Mwampashi, J.) in Civil Appeal No. 17 of 2013. The application is by way of a Notice of Motion which is predicated under Rules 45(b), 46(1) and 49(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules). The same is supported by an affidavit duly affirmed by the applicant. But it is pertinent to observe that the application has been resisted by the respondent through his affidavit in reply.

At the hearing before us, both parties entered appearance in person, unrepresented. The applicant was the first to rise, whereupon he fully adopted the Notice of Motion as well as the supporting affidavit. Elaborating his quest for leave, the applicant submitted that the decision of the High Court was against the weight of the adduced evidence and that the High Court further erred in dismissing his application for leave to appeal against the decision desired to be impugned.

For his part, the respondent just as well fully adopted his affidavit in reply through which he strenuously resisted the application. To appreciate the force behind the respective rival positions taken by the parties we think it is necessary to explore the factual background of the matter.

In the Land Tribunal at Vuga, the applicant instituted Civil suit No. 37 of 2008 against the respondent over an allegation that the latter had encroached upon a portion of his land. From the evidence adduced at the Tribunal, the following details were beyond question: **First,** that the applicant had a farm adjacent to the disputed parcel of land which he acquired from a certain Ali

Ramadhani Wakati (Dw2) in consideration of a sum of shs. 200,000/=. **Second,** that the respondent also acquired, from the same Dw2 an adjacent piece of land which is, however, separate from the applicant's area of domain. **Third,** in his testimony, Dw2 confirmed both details and; **fourth,** that the trial Tribunal paid a visit to the *locus in quo* and just as well confirmed the foregoing enlisted details.

On the totality of the evidence, the trial Tribunal did not hesitate to find as an established fact that the applicant was not the lawful owner of the disputed parcel of land. Ironically, the trial Tribunal proceeded to declare DW2, who was not a party to the suit, to be the lawful owner of the disputed farm. In yet another outlandish order, the trial Tribunal required the applicant to redress the respondent with a sum of shs. 200,000/= on account of what it conceived as compensation for unjustifiable inconvenience suffered by the latter.

On appeal, the High Court found no valid reason to vary the finding of the trial Tribunal to the effect that the applicant was not the lawful owner of the disputed parcel of land. But the order

granting ownership of the piece of land to DW2 was overturned and substituted with the grant of ownership to the respondent. What is more, the compensatory order meted out against the applicant was similarly overturned and set aside.

Against the foregoing background, the applicant is aggrieved and would wish to impugn the verdict of the High Court on appeal. In his first step, and in accordance with the established procedure, the applicant approached the High seeking leave to appeal to this Court. Nonetheless, his application was dismissed for want of demonstrating, from the decision sought to be impugned, any point of law worth the attention and consideration by the Court of Appeal. He is still dissatisfied and, hence the present application which has been preferred by way of a second bite.

We have accorded the competing arguments of the parties some due consideration. The crucial issue before the two courts below was whether or not the appellant was the rightful owner of the disputed parcel of land into which the respondent allegedly trespassed. The trial Tribunal answered the issue in the negative

and, as we have already intimated, the first appellate court found no cause to vary the finding. The crucial issue before both courts below was essentially one of fact and which was wholly dependent on the credibility of witnesses. In this regard, in the case of **Ali Abdallah Rajabu Vs Saada Abdallah Rajabu and Others** [1994] TLR 132 this Court held *inter alia* that:

> " *Where the decision of a case is wholly based on the credibility of witnesses, then it is the trial court which is better placed to assess their credibility than an appellate court which merely reads the transcript of the record."*

Corresponding remarks were made in the case of **Omari Ahmed Vs The Republic** [1983] TLR 15 where it was observed:-

> " *...the trial court's finding as to the credibility of witnesses is usually binding on an appeal court unless there are circumstances on the record which call for a reassessment ."*

No such circumstances are in existence in the case under our consideration and given the concurrent findings of fact by the

two courts below on the issue of ownership of the disputed parcel of land, the Court of Appeal will be left with no room for any intervention. To say the least, the applicant has not demonstrated any point of law worth the attention or consideration by the Court. Thus, on the material before us, this application is bereft of merits and it is, accordingly, dismissed. Each party to bare his own costs.

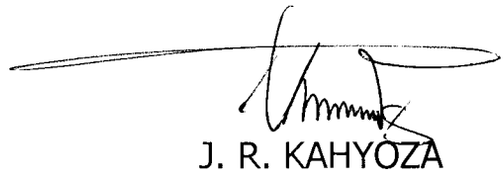
DATED at **ZANZIBAR** this 9th day of December,2015.

M. C. OTHMAN
CHIEF JUSTICE

N. P. KIMARO
JUSTICE OF APPEAL

K. M. MUSSA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.



J. R. KAHYOZA
REGISTRAR
COURT OF APPEAL