

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM**

**PC CIVIL APPEAL NO.94 OF 1995**

**OMARY RAJABU ..... APPELLANT**

**Versus**

**JUMA SULTANI LANGENI ..... RESPONDENT**

**R U L I N G**

**CHIPETA, J.:**

**Omari Rajabu** is an appellant in (P.C) Civil Appeal No.94 of 1995, which is still pending. Before the appeal was fixed for hearing, the appellant filed the present application seeking an order for the recording of additional evidence. The application was opposed by the respondent. The learned advocates of the parties filed written submissions.

I have carefully considered the affidavit, counter affidavit, and the written submissions. In my view the crucial question is as to whom the house in question belongs. The evidence sought to be adduced additionally is crucial, and it appears that it came to be discovered much later, most probably due to the illiteracy of the applicant. The evidence, if believed, could throw important light which could influence the result of the case. As was pointed out by **Denning, L.J.**, in the case of **Ladd v. Marshall, (1954) 1 W.L.R. 1489** at p.1491!

**To justify the reception of fresh evidence ...  
three conditions must be fulfilled: first, it must  
be shown that the evidence could not be obtained  
with reasonable diligence for use at the trial;  
secondly, the evidence must be such that, if given,  
it would probably have an important influence on the  
result of the case, though it need not be decisive:**

**thirdly, the evidence must be such as is  
presumably to be believed, or in other words, it  
must be apparently credible, though it need not be  
incontrovertible.”**

In the instant case, the circumstances show that the evidence sought could not be obtained with reasonable diligence for use at the trial for reasons given above. Secondly, bearing in mind that the evidence is largely documentary relating to public records, it would probably have an important influence on the result of the case as it would go to the root of the question of ownership of the property in dispute. Thirdly, the evidence is presumably believable, though perhaps not incontrovertible.

For these reasons, I hereby grant this application and order that the additional evidence shall be recorded by this court to eschew further delay. Costs shall be in the cause.

**B. D. CHIPETA  
JUDGE**

**23/6/2001**

**Coram: F.S.K. Mutungi-DR *Mwezi***

**For the Appellant: Mr. ~~Mhezi~~ Mhango**

**For the Respondent: Mhango for Mr. Magafu**

**CC: Maurice**

**Court:** Ruling read this 28/6/2001 in Court before **Mr. F.S.K. Mutungi-DR** in the presence of **Mr. Mhezi Mhango** the appellant/applicant also holding brief for **Mr. Magafu** from the respondent.

**(Sgd): F.S.K. MUTUNGI  
DISTRICT REGISTRAR  
28/6/2001**

**Order:** Mention In chambers on 11/9/2001.

**(Sgd): F.S. MUTUNGI  
DISTRICT REGISTRAR  
28/6/2001**

**1/9/2001**

**Coram: B.D. Chipeta, J.**

**For the Appellant: Mr.Magafu**

**For the Respondent: Absent**

**CC: Emmy**

**Order:** Hearing on 15/11/2001. Respondent to be served.

**B. D. CHIPETA  
JUDGE  
11/9/2001**