

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

(PC) CIVIL APPEAL NO. 112 OF 1999

**IN A MATTER OF AN APPLICATION FOR LEAVE TO
APPEAL TO THE COURT OF APPEAL**

DAINESS MHAGAMA.....APPELLANT/APPLICANT

VERSUS

TOGOLANI MBUSSO.....RESPONDENT

RULING

SHANGWA. J.:

This is an application for leave to appeal to the court of Appeal of Tanzania against the decision of the High Court delivered by the late Mr. Justice Katiti on 16th November, 2000. It is made under S.5(2)(c) of the Appellate Jurisdiction Act No. 15 of 1979. Under this section, before an appeal can lie to the Court of Appeal against the decision or order of the High Court a certificate has to be issued by the High Court to indicate that there is a point of law which is involved.

The dispute between the parties started from the Primary Court of Kimara Kinondoni District in Dar es Salaam Region where it was registered as Civil Case No. 30 of 1994. From there, it went to the District Court of Kinondoni in Civil Appeal No. 1 of 1995 and then to the High Court in PC Civil Appeal No. 112 of 1999.

The matter which was filed by the respondent Togolani **Mbusso** in the Primary Court of Kimara was for the clann of **Shs.46,000** against the applicant Dainess Mhagama being rent in arrears. Tins rent was for the 'banda la uani' - back yard house.

When the Primary Court Magistrate read over the claim to the applicant, she denied it by saying that the house was hers. When she said so, the issue of the rent in arrears for the 'banda la nam' and the issue of the ownership of the mam house No. 107 were jumbled up on the record and the suit proceeded as if it were for a claim of ownership of the premises.

Evidence was then produced by the respondent to show that the 'banda la uani' together with the mam house No. 107 were sold to him by the applicant's husband Edward Mhagama who left for Songea and thereafter the applicant who could not accompany him there requested the respondent to stay in the 'banda la uani' as tenant at an agreed rent. The Primary Court held that the mam house belonged to the respondent and that it was fair for the applicant to pay him the rent in arrears of Shs.46,000.

When the applicant lodged her appeal in the District Court of Kinondoni, the issue of ownership of the main house and the renting of the 'banda la uani' was considered and it was held that the owner of these premises was the respondent and her appeal was dismissed.

Thereafter, she appealed to the High Court where the question of ownership of these premises and the jurisdiction of the Primary Court to entertain a claim for rent were both considered in great details. It was held that the owner of the premises is the respondent and that the Primary Court had jurisdiction to entertain a claim for rent.

Learned Counsel for the applicant Prof. Fimbo stated at paragraph 1.2 of his written submissions that the subject matter of the claim of the respondent in the proceedings in the High Court and the lower Courts was arrears of rent of a back-yard house, Shs.46,000. He pointed out that there are two points of law for certification namely:

1. Whether the Primary Court at Kimara had jurisdiction in a rent claim

which is regulated by the Rent Restriction Act No. 17 of 1984.

2. Whether it was irregular for the High Court to award the respondent die main house in a suit for arrears of rent of a back yard house.

On the other hand, learned counsel for the respondent, Mr. Lukwaro contended that the applicant's contention that the Primary Court had no jurisdiction to entertain the claim because the issue before the Court was to determine a dispute on rent is without basis, and that the proceedings in the lower Courts and the High Court indicate that the matter was with regard to ownership of House No. 107 and the issue of rents was mentioned only in passing.

He submitted that there is nothing in the proceedings which qualify for a certificate of the High Court that a point of law is involved and prayed for the dismissal of this application.

In fact, the claim which had been taken by the respondent against the applicant in the Primary Court at Kimara was for arrears of rent of a back yard house and not ownership of the main house No. 107.

The respondent and the applicant had no dispute over the ownership of the main house. Their dispute was over non-payment of rent for the 'banda la uani' amounting to Shs.46,000 which was in arrears.

The issue of ownership of the main house No. 107 was entered on record by the trial Primary Court Magistrate as a result of his failure to address himself to the specific claim for the rent in arrears which was before him.

Unlike Mr. Lukwaro, Advocate, I am of the view that what was mentioned in passing when the matter was proceeding in the Primary Court was not the issue of rent but the issue of ownership of the premises which the Primary Court initiated, the District Court re-considered and the High Court spent a lot of extra energy.

I think therefore, that the question as to whether the Primary Court at Kimara had jurisdiction in a rent claim which is regulated by the Rent Restriction Act No. 17 of 1984 and whether it was regular for the High Court to hold that the main house belongs to the respondent in a suit for arrears of rent of a back yard house - 'banda la uani' are points of law which need certification.

I do certify that the said points of law are involved in the decision of the High Court made on 16th November, 2000. I would therefore grant this application for leave to appeal to the Court of Appeal of Tanzania. Each party to bear his own costs.

A. SHANGWA

JUDGE

29/5/2003

Delivered in Court at Dar es Salaam in the presence of Mr. Lukwaro for the Respondent who is also holding Prof. Fimbo's brief for the applicant this 29th day of May, 2003.

A. SHANGWA

JUDGE

29/5/2003