

**IN THE HIGH COURT OF ZANZIBAR
HELD AT VUGA
CIVIL APPLICATION NO. 16 OF 2021**

ABASS GULAM HUSSEIN MANJI APPLICANT

VS

ABUBAKAR ALI SALIM RESPONDENT

RULING OF THE COURT

22/07/2021 & 24/08/2021

KAZI, J.:

In January 2020, the respondent Abubakar Ali Salim instituted a civil suit in the Land Tribunal (the Tribunal) for Zanzibar against the applicant Abbas Gulam Hussein Manji, claiming for a plot of land with a house foundation located at Kibweni, Unguja. The matter was assigned to Hon. Zahra H, Haji (RM) for the determination. On 25/08/2016, Hon. Haji (RM) delivered her verdict in favour of the respondent. The applicant was aggrieved by that decision and appealed to this court. Whereby on appeal, the court (Suwedi, J) on 25/09/2018 in Civil Appeal No 14 of 2018 quashed and set aside the Tribunal's proceedings, judgement, and

orders. Further, the matter was ordered to be tried *denovo* before the new panel of the Tribunal.

Complying with the order of retrial, sometime in May 2019, the Chairman of the Tribunal assigned the matter to Hon. Is Haka A. Khamis (RM). On 16/07/2020, Hon. Is Haka A. Khamis (RM) adjudged the suit in favour of the respondent. The decision of the Tribunal did not amuse the applicant and thus appealed to this court. At this time, the court (Issa, J) in Civil Appeal No 41 of 2020 dismissed the appeal. Still unsatisfied, the applicant filed this application for leave to appeal to the Court of Appeal.

I have narrated the above synopsis of the Tribunal's Civil Case No. 126 of 2010 for the reason that will be apparent in due course.

This application is preferred under Section 5 (1) (c) of **the Appellant Jurisdiction Act** Cap 141 RE, 2002 and Rule 45 (a) and 47 of **the Tanzania Court of Appeal Rules**, 2009 as amended. The application is supported

by the affidavit deponed by Nassor Khamis Mohammed, an advocate for the applicant. Grounds and reasons of the application have been set forth on that affidavit, and they are best captured in paragraphs 6 and 7, which read as follows: -

“6. That after having read carefully the judgement of the High Court of Zanzibar in Civil Appeal No 41 of 2020, I have realized that there are matters which need the adjudication by the Court of Appeal of Tanzania. These matters are: -

a) whether the High Court was proper (right) on neglecting its primary duty of adjudication for failing to rectify the errors done by the lower Courts, which duty is among the judicial obligation vested on it.

7. That the decision of the High Court of Zanzibar (Hon. Abdul-hakim Ameir Issa) in Civil Appeal No. 41 of 2020, is full of illegalities

which needs the intervention of the Court of Appeal of Tanzania.”

In this court, the applicant is enjoying the service of Mr Nassor Khamis Mohammed, learned counsel, while the respondent is enjoying the service of Haji Suleiman Teterere, learned counsel. The application was heard through written submissions.

In his submission, Mr Mohammed, learned counsel for the applicant, generally reiterated what was deponed in his affidavit. In addition, he submitted that, in their opinion, documents received by the tribunal should be scrutinized and either admitted or rejected. When a document is accepted before the tribunal, it is the duty of the magistrate to rule on the effectiveness or relevancy of the documents and not ignore them as if they didn't exist. He submitted further that, in the tribunal proceeding, it shows that the applicant identified the documents, and the tribunal took notes of it, yet the documents as said not to be tendered. He

added that the question that needs to be answered by the Court of Appeal of Tanzania is how could a witness identify a document and go through it before he/she duly tendered it to the said tribunal. Mr Mohammed cited the case of **Nurbhai N. Rattansi v Ministry of Water Construction Energy, Land and Environment and Hussein Rajabali Hirji** [2005] TLR 220 to support his submission.

On the other hand, the respondent learned counsel Mr Teterere submitted that there is no legal issue for this court to grant leave to appeal to the Court of Appeal of Tanzania due to the fact that the applicant burdened the duty to the High Court on the errors done by the applicant advocate at the tribunal, that is why the High Court dismissed the appeal. Mr Teterere submitted further that, according to the tribunal records, it shows that the applicant identified the documents, but the advocate for the applicant failed to lead his witness to tender the said documents. He argued further that the identification and tendering of documents are quite different. Therefore,

he added, the High Court dealt with that issue properly as required by the laws that documents not admitted in evidence shall not form part of the record.

Regarding the cited case of **Nurbhai N. Rattansi** (Supra), Mr Teterere argued that the said case is inapplicable in the circumstances of this application. In support of what he submitted, Mr Teterere referred to the case of **Harban Haji Mosi and Another v. Omar hilal Seif and another** [2001] TLR 409 and urged this court to dismiss this application with costs.

Having gone through the affidavits as well as submissions made by both counsels, the gist that needs my determination is whether the applicant has justifiable reasons for this court to grant him leave to appeal to the Court of Appeal of Tanzania. In my determination, I reckon, my point of departure will first consider paragraphs 2 and 3 of the applicant affidavit in support of this application and paragraph 1 of the applicant's written submission. Paragraphs 2 and 3 of the applicant affidavit read as follows: -

"2. That in the year 2010 the respondent herein filed a Civil Case No. 126/2010 before the Land Tribunal of Vuga Zanzibar seeking for an order against the applicant. **The said case was heard and decided in favour of the respondent on 25th August 2016 by Hon. Zahra H. Haji (RM)**

3. That, being aggrieved with the whole said judgement, the Appellant filed a Civil Appeal No. 41 of 2020 before the High Court of Zanzibar at Vuga and the appeal was heard by Honorable Abdul- hakim Ameir Issa J.,
Upon hearing of the said appeal, the High Court of Zanzibar on 22nd February 2021 delivered judgement in favour of the respondent as the appeal lacks merit and dismissed with cost".

[emphasis added]

The first paragraph of the applicant's written submission read as follows: -

"Your Honour; in the year 2010 the Respondent herein filed a Civil Case No. 126/2010 before the Land Tribunal of Vuga Zanzibar seeking for an order against the applicant. The said case was heard and decided in favour of the respondent on 25th August 2016 by Hon. Zahra H. Haji (RM)"

Apparently, what was deponed in paragraphs 2 and 3 of the applicant affidavit, and what was submitted in the first paragraph of the applicant's written submission do not relate to the Civil Appeal No 41 of 2021. As I have narrated earlier, in Civil Appeal No 41 of 2020, this court dismissed the appeal challenging the decision of the Tribunal of 16/07/2020, which was delivered by Hon. Ishaka A. Khamis (RM). The decision of Hon. Zahra H. Haji (RM) of 25th August 2016 was quashed and set aside by this court on 25/09/2018 in Civil Appeal No 14 of 2018. Therefore, what is deponed in the applicant affidavit and what was submitted in the first paragraph of the applicant submission is untrue. As what is deponed in paragraphs 2 and 3 of the affidavit is

untrue, the next question is what are the effects these paragraphs have on the entire affidavit.

In my view, I find that the false paragraphs mentioned above are substantial in nature that the affidavit cannot stand even if they will be expunged. Thus, its effect is that the court cannot act on the affidavit based on untrue facts.

From the above observation, I found this application for leave to appeal to the Court of Appeal to be devoid of merit, and I hereby dismiss it with costs.

Dated at Zanzibar this 24th August 2021.



G. J. KAZI
JUDGE
24/08/2021