IN THE HIGH COURT OF TANZANIA

AT MWANZA

MISC. LAND APPLICATION NO. 91 OF 2017

KULWA LUTANDULA.....APPLICANT

VERSUS

1. PAULO GEORGE
2. RETISIA MAGI } **.....RESPONDENTS**

RULING

07/12/2018 &31/01/2019

Gwae, J

Dissatisfied with the decision of this court (**Matupa, J**) dated 31st March 2017 where the respondents' appeal was allowed with costs, the applicant timely filed notice of appeal on 13th April 2017.

Now, the applicant has brought this application by way of chamber summons under section 5 (1) (c) of the Appellate Jurisdiction Act, Cap 141 Revised Edition 2002 and section 47 (1) & (2) of the Land Disputes Courts Act, Cap 216 Revised Edition, 2002 praying for leave to appeal to the Court of Tanzania and certificate on points of law fit for determination by the Court of Appeal.

In essence, the decision of the court was to the effect that as much as the respondents (the married couples) were either given the suit by the 2nd respondent's father one **Magi Ludomoji** or bought the same from the said Magi, the donor/vendor had no right to dispossess the respondents from the suit land, equally he had no right to sell it to the appellant and if the respondents did not pay the purchase price in full, the only remedy for the vendor/seller was to sue for the remaining balance. The court further held that the doctrine of caveat emptor applied by the appellate land tribunal was inapplicable against the respondents.

Following the above finding of this court, the applicant has proposed the following to be points of law worthy for consideration by the Court of Appeal;

i. Whether or not the honourable judge was legally correct in holding that there was no caveat emptor involved in this case, for applicant to buy the suit land before investigating that it was either donated to respondents by the vendor through natural love and affection , and or was either sold to that by the vendor prior to the purchaser by the applicant

ii. Whether or not the honourable judge was legally correct in holding that the vendor (father of the 2nd respondent sold to the applicant the suit land farm which was in occupation of the respondents who had already had the suit land by a way of a gift and the vendor (father) wanted to sell while it was so donated to the respondents as a gift

iii. Whether or not the honourable judge was legally correct in holding that, the vendor (the father of the 2nd respondent) had no right to dispossess the suit land farm which he had donated to the respondents as a fight and had no further right to sell the said land farm which he had already so donated to the respondents

Before this court, parties appeared in person and they had nothing usefully to verbally argue.

Looking at the 1st proposed point, I must say that the applicant misconstrued the decision of the court because what the learned appellate judge stated is that the doctrine of caveat emptor was misplaced as the same was used against the respondents who were initially given or purchased the suit land and they are in actual possession while the

applicant was subsequent purchaser of the same. Hence the doctrine was applicable only against the applicant and not respondents as incorrectly found by the appellate land tribunal and that was pursuant to the evidence on record.

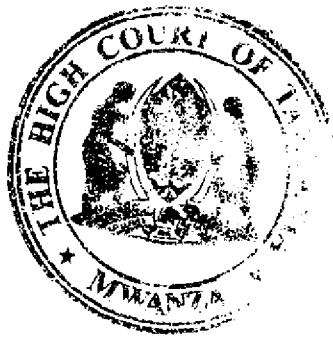
In the 2nd demonstrated point, a holding that the 2nd respondent's father sold to the applicant the suit land when the respondents were already in occupation, this holding is backed by the evidence, hence it cannot be said to be a point of law worthy for determination by the Court of Appeal.

Coming to the 3rd proposed point, I have not captured the intention of the applicant when he is saying that the 2nd respondent's father had no right to dispossess the suit land which he had already donated to the respondents as a **fight.** I have also ascertained the proposed point on whether the said Magi Ludomoji had further right to sell the farm which he had already donated to the respondents. I think this point of law is not fit to be determined by the Court of Appeal because it is obvious once donation is absolute, the ownership must have shifted from the original owner to the donee of any gift or if the respondents did not accomplish

paying the remaining balance the recourse is as rightly stated in the judgment and not a further right to re-sell to another person.

It follows therefore; this application is dismissed entirely, each party to bear its own costs

It is so ordered.



M. R. Gwae
Judge
31/01/2019