

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

Before: MAKAME, J.A.

CIVIL APPLICATION NO. 46 OF 1996
In the Matter of an Intended Appeal

BETWEEN

JAMAAT ANSAAR SUNNA APPLICANT

AND

THE REGISTERED TRUSTEES OF UMOJA WA
VIJANA WA CHAMA CHA MAPINDUZI RESPONDENT

(Application for an order that Additional
Evidence from the Judgment/Decree/Decision
of the High Court of Tanzania at Dar es Salaam)
(Kyando, J.) dated the 12th day of August 1993

in

Civil Case No. 45 of 1986

BETWEEN

JAMAAT ANSAAR SUNNA

AND

THE REGISTERED TRUSTEES OF UMOJA WA VIJANA WA CHAMA CHA MAPINDUZI

R U L I N G

MAKAME, J.A.:

This application is by JAMAAT ANSAAR SUNNA who are represented by Dr. A.J. Saffari, learned advocate. The applicant is seeking an order for additional evidence, which application is resisted by the respondent, advocated for by Mr. Mwakajinga, learned counsel.

Counsel for the respondent requested that this application be stood down until a preliminary objection for which he filed a Notice way back in July, 1996 is disposed of. Dr. Saffari pointed out that he was aware of that application and that he had already filed a counter-affidavit. I decided to go ahead and hear this application. I appreciate of course that if the respondent's preliminary objection is upheld the main appeal would automatically disappear, but I think it is not desirable that this application should remain unattended until after the other application is heard.

This present bridge should be crossed now - if later the preliminary objection is sustained there would be no occasion to adduce additional evidence even if today's application is allowed. If the preliminary objection is upheld the order for additional evidence will already be there. If I do not allow this application that would be the end of this matter.

It is evident that the intended appeal arises from a sensitive litigation involving titles to land. Dr. Saffari submitted that since the disposal of the matter in the High Court he has researched and discovered the existence of some survey maps which would have established that there was no double allocation of the plot in issue, and so the High Court (Kyando, J.) would not have arrived at the conclusion reached if it was aware of it. Appreciating the true picture would avoid the demolition of a mosque already in use.

While I find it engaging Mr. Mwakajinga's retort that demolition of the mosque would be justice itself, for indeed justice consists of giving each man his due, I think it will be more just that the evidence alleged to have come to light after the determination of the matter in the High Court should be adduced, in the circumstances. I take into account, in considering Dr. Saffari's submission, the fact that the applicant's case was handled by a string of advocates, four in all before Dr. Saffari, and this this might have made the applicant fall between several stools, as it were.


I grant the applicant's prayer for additional evidence regarding the alleged survey maps and order the trial High Court to take such additional evidence, in terms of Rule 34 (1) (b) of the Tanzania Court of Appeal Rules.

I make no order as to costs.

Dated at Dar es Salaam this 27th day of March, 1997.

L. M. MAKAME
JUSTICE OF APPEAL

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


(M. S. SHAUQALI)
DEPUTY REGISTRAR