

TANZANIA / JUDGMENT

issa ndee vs sanda hussein sanda

2006 tzhc 230 8 september 2006

COURT
TZHCDECIDED
8 September 2006

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IN THE HIGH COURT OF TANZANIA AT DODOMA MISCELLANEOUS CIVIL APPLICATION NO. 58
OF 2004 (Originating from PC Civil Appeal No. 75 of 1996 of the High Court of Tanzania at
Dodoma) ISSA NDEE APPLICANT VERSUS SANDA HUSSEIN
SANDA RESPONDENT

RULING

JULY 20. 2006 & SEPTEMBER 8, 2006 MJASIRI. J. : This is an application for leave to appeal to the Court of appeal of Tanzania under Section 5(1) of the Appellate Jurisdiction Act 1979 and Rule 44 of the Court of appeal Rules. The applicant appeared in person. He prayed to the court to be granted his application on the strength of the affidavit filed in court. According to the applicant's affidavit, the intended appeal raises interesting points of law. The basis of the applicant's argument relates to the legality of the attachment and sale of a house. Mr. Nyabiri Advocate appeared for the Respondent. Mr. Nyabiri Advocate opposed the application on various grounds. Mr. Nyabiri argues that the notice of appeal was filed out of time hence not complying with the requirement under Rule 76(2) of the Court of Appeal Rules 1979. Mr. Nyabiri also argued that the Respondent was not a party in the lower court and the right party should have been Athumani Ali Isimbula as provided under Rule 77(1) of the Court of appeal Rules. Mr. Nyabiri also submitted that the Application for leave was brought out of time therefore not complying with Rule 43(a) of the Court of Appeal Rules. The intended appeal to the court of appeal originates from the Primary Court. Section 5(2) (C) of the appellate Jurisdiction Act 1979 provides as under:- "No appeal shall lie against any decision or order of the High Court in any proceedings under Head (C) of part III of the Magistrates Court. Act unless the High Court certifies that a point of law is involved in the decision or order." On reviewing the affidavit filed by the application I am of the view that no point of law has been made out fit for consideration by the Court of appeal. The issues raised in the said affidavit seem to be factual and relating to sequence of events. In view of what has been stated hereinabove the application is hereby dismissed. Delivered in Chambers this 8th day of September in the presence of the applicant and Mr. Nyabiri advocate for the respondent. SAUDA MJASIRI JUDGE SEPTEMBER 8, 2006.

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