IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

(LAND DIVISION)

AT ARUSHA

MISC. LAND APPLICATION NO. 123 OF 2022

(C/F Misc. Land Application No. 83 of 2021 in the High Court of the United Republic of Tanzania at Arusha (Hon. B. K. PHILIP, J.) dated 22/07/2022, Misc. Land Appeal No. 25 of 2019 in the High Court of the United Republic of Tanzania at Arusha, Coming from Land Appeal No. 16 of at the District Land and Housing Tribunal for Manyara at Babati and original Application No. 7 of 2016 at Endasak Ward Tribunal)

BETWEEN

NURDIN ISSA YUSUPH..... APPLICANT

VERSUS

NEMES SULTAN.....RESPONDENT

RULING

30/05/2023 & 26/06/2023

MWASEBA, J.

Under Section 5 (1) (c) of the Appellate Jurisdiction Act [cap 141 R.E 2019] and **Section 47 (2) and (3) of the Land Disputes Courts Act** [Cap 216, R.E 2019] The Application is made. The applicant is seeking for this court to certify that there is a point of law worth consideration by the Court of Appeal of Tanzania in Miscellaneous Land Appeal No. 25 of 2019(Y.B Masara, J). He further prayed that the

court be pleased to grant him leave to file an appeal to the Court of Appeal of Tanzania against the said judgment and decree of the High Court. This application is supported by an affidavit deponed by the Applicant himself.

During the hearing of this application, Mr. Erick Mbeya learned counsel appeared for the applicant while Mr. Paschal Peter learned counsel appeared for the respondent. The matter was disposed of by way of written submission.

Submitting in support of the Application, Mr. Mbeya learned counsel argued that there are two points of law worth being certified as points of law to be determined by the Court of Appeal. The first one is illegality, as reflected in paragraphs 7 (a), (b), (c), (d), and (e) of the affidavit supporting the application. He argued further that in both lower courts, they assessed the existence of the sale agreement; however, the same was never submitted as evidence which is contrary to **Section 64 (1) of the Land Act**, Cap 113 R.E 2019. This provision needs all transactions of lands to be in writing. He argued further that even the boundaries of the disputed land were insufficient, which is contrary to **Order VII Rule 3 of the Civil Procedure Code**, Cap 33 R.E 2019. More to that, he argued that the value of the suit property was based on

a presumption which created doubt about whether the ward tribunal had jurisdiction to entertain the matter or not.

Mr. Mbeya submitted further that the records of the ward tribunal show there were two proceedings, the one that commences on 24.10.2016, which bears the endorsement of the secretary only while the names of the Chairman and Secretary remain unrevealed. The second one commences on 25.12.2016 and bears the endorsement of the Secretary and Chairman. He supported his argument with the case of **Nurdin Issa Yusuph vs Nemes Sultan**, Misc. Land Application No. 83 of 2021. He argued further that the trial tribunal heard the matter on a public holiday which is 25.12.2016, which is contrary to **Section 59 (1) (g) of the Evidence Act**, Cap 6 R.E 2022.

He argued further that the ward tribunal ordered payment of tenancy rent without quantifying the amount involved. More to that, in Land Appeal No. 25 of 2019, the parties were not given the right to appeal. Therefore, the parties were not aware of what was next after the delivery of the judgment. He added that the judgment did not even contain reasons for judgment.

On the second point that needs to be certified as a point of law as submitted by Mr. Mbeya is the right to be heard. He argued that as they

had already filed a notice of Appeal to the Court of Appeal on 22.05.2020, denying them this application would amount to condemning him unheard. Further, as the matter originated from Ward Tribunal, the law requires the applicant to seek a certificate on the point of law before filing an appeal to the court of appeal as per **Section 47 (3) of the Lands Disputes Courts Act**, Cap 216 R.E 2019.

He added that the applicant is also seeking leave to appeal to the Court of Appeal as per **Section 47 (2) of Cap 216 R.E 2019** and so, considering the irregularities from the trial court in Application No. 7 of 2016 as embraced in Misc. Land Appeal No. 25 of 2019 and Land Appeal No. 16 of 2017 at Babati DLHT, and since the applicant is a layman aged 70 years old, they prayed for the application to be granted.

Opposing the application, Mr. Peter, learned counsel for the respondent, submitted that the issue of illegality, as alleged by the applicant, was already exhausted by this court in Lad Appeal No. 25 of 2019, delivered on 24.04.2020. Thus, he prayed for the same to be rejected.

It was his further submission that the issue of the description of the suit property, the value of the suit land, jurisdiction, distinctive version of proceedings, names of chairman and secretary, and public holidays were already established on the lower courts, and they were disposed of

critically and centered the position of the law required. So, he prayed for the application to be rejected with costs.

In a brief rejoinder, Mr. Mbeya insisted that the applicant is still grieved by the decision of the High Court and the lower tribunals, that's why he preferred an appeal to the Court of Appeal. He maintained his prayer for the application to be granted.

Having heard the submission in support and against the application from the counsel of the parties, the issue for determination is whether there is a point of law involved in the intended appeal.

Section 47 (2) of Cap 216 R.E 2019 provides that:

> *"A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may, with leave of the High Court or Court of Appeal, appeal to the Court of Appeal."*

And for the decision that originated from the Ward Tribunal, **Section 47 (3)** of Cap 216 R.E 2019 also provides that:

> *"Where an appeal to the Court of Appeal originates from the Ward Tribunal, the appellant shall be required to seek for the Certificate from the High Court certifying that there is point of law involved in the appeal."*

See also the case of **Harban Hajimosi and Another vs Omari Hilal Seif and Another** (2001) TLR 409.

However, the Court of Appeal has decided in several cases that in land matters, the High Court decision is final unless there is a point of law worth being determined by the CAT. The said duty was pronounced by the Court of Appeal in **Dorina N. Mkumwa vs Edwin David Hamis (Civil Appeal No. 53 of 2017) [2018] TZCA 221 (10 October 2018).** It stated that:

> *"In land disputes, the High Court is the final court on matters of fact. The Legislature has taken this finality so seriously that it has, under subsections (1) and (2) of section 47 of Cap. 216 [as amended by the Written Laws (Miscellaneous Amendments) (No.3) Act, 2018 Act No. 8 of 2018] imposed on the intending appellant the statutory duty to obtain either leave or certificate on the point of law before appealing to this Court. It is therefore self-evident that applications for Certificates of the High Court on points of law are serious applications. Therefore, when High Court receives applications to certify a point of law, we expect Rulings to show a serious evaluation of the question of whether what is proposed as a point of law is worth to be certified to the Court of Appeal."*

Therefore, guided by the cited authority, the Court of Appeal does not expect the certifying High Court to act as uncritical conduit to allow whatsoever the intending appellant proposes as point of law to be automatically forwarded to the Court of Appeal as point of law.

Looking at the 1st point of illegality, this court noted that most of the points that were raised, such as the issue of a description of the suit property, the existence of two distinctive proceedings, the pecuniary jurisdiction of the ward tribunal, and the allegation that the application was heard on a public holiday were raised and determined by the 2nd appellate court as evidenced by Land Appeal No. 25 of 2019 from page 5 to 13 of the judgment. The rest of the allegation that there was no lease agreement over the suit property, the act of the ward tribunal to order payment of tenancy-rent arrears without quantifying amount involved was not raised at the 2nd appellate court. Hence, the same cannot be raised at this stage of certifying points of law.

As for the issue that in Land Appeal No. 25 of 2019, the judgment did not contain reasons for judgment; the same was not supported by the records of the High Court. In Land Appeal No 25 of 2019 the High Court Judge explained each ground together with the reasons for each decision. Further, as to the issue of failure to state right to appeal, the

same did not prejudice the applicant as he is aware that he had to appeal if he was dissatisfied, and he is exercising his remedy in the case at hand.

Coming to the last point where the counsel for the applicant submitted that if the application is not granted, they will be condemned unheard. It has to be noted that, as submitted in the case of **Dorina N. Mkumbwa vs Edwin David Hamis** (supra) that the High Court needs to be cautious of the cases which are forwarded to the Court of Appeal for determination, particularly on land matters. Most of the things the applicant needs the Court of Appeal to determine were already determined by the 2nd appellate court, and most of them involve matters of facts. Therefore, denying to grant this application does not mean the applicant has been denied his right to be heard as both parties were already given chances to be heard by the lower tribunals and this court. Therefore, this point is not worth to be determined by the Court of Appeal of Tanzania.

For the fore Stated reasons, since there is no legal points worth deliberation and determination by the Court of Appeal, the application is hereby dismissed with costs.

Ordered accordingly.

DATED at **ARUSHA** this 26th day of June 2023.

N.R. MWASEBA

JUDGE