

**IN THE COURT OF APPEAL OF TANZANIA  
AT ARUSHA**

**(CORAM: OTHMAN, C.J., KIMARO, J.A., And MASSATI, J.A.)**

**CIVIL APPEAL NO. 39 OF 2012**

**MARCO KIMIRI.....1<sup>ST</sup> APPELLANT**  
**NAFATAL LOGILAKI.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**NAISHOKI ELIAU KIMIRI..... RESPONDENT**

**(Appeal from the Judgment and Decree of the High Court of Tanzania  
at Arusha)**

**(Longway, J.)**

**dated the 31<sup>st</sup> day of March, 2009  
in  
Misc. Land Appeal No. 4 of 2006**  
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**RULING OF THE COURT**

28<sup>th</sup> September, & 1<sup>st</sup> October, 2012

**OTHMAN, C.J.:**

This is a preliminary objection by the respondent, under Rule 107(1) of the Court of Appeal Rules, 2009 challenging the competency of the appeal:

*(a) That as the matter originated in the Ward Tribunal, the Appellants ought to have applied for a certificate from the High Court under*

*section 47(2) of the Courts (Land Disputes Settlements) Act, Cap 216 R.E. 2002 certifying that there are points of law involved in the appeal.*

*(b) That there was no proper certificate issued by the High Court as the learned High Court Judge certified that there are points of law worth determination by the Court of Appeal under section 5(2)(c) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002.*

In his submission before us, Mr. Severin Lawena, learned Counsel for the respondent contended that as the appeal originates from the Ward Tribunal, the appellants were required under Section 47(2) of the Courts (Land Disputes Settlements) Act, to apply for and obtain a certificate from the High Court certifying that there is a point of law involved in the appeal for determination by the Court. In the instant case, the appellants, in one application, applied for both leave to appeal and a certificate on a point of law under sections 5(1)(c) and 5(2)(c) of the Appellate Jurisdiction Act. They applied for what was not required (i.e. a leave to appeal) and what

was required (i.e. certificate on a point of law). Moreover, it was wrong to have moved the court for a certificate on a point of law under section 5(2)(c) of the Appellate Jurisdiction Act, which is inapplicable. That the High Court ultimately, only granted leave to appeal. What section 47(2) of the Courts (Land Disputes Settlements) Act requires is a certificate on a point of law and not leave to appeal, which is required for appeals originating from the District Land and Housing Tribunal and not those from the Ward Tribunal. Mr. Lawena pressed that the appeal was thus incompetent and should be struck out with costs.

On their part, Mr. Marco Kimiri and Mr. Naftal Logilaki, respectively the first and second appellants, who were unrepresented by learned Counsel, submitted that they were not legal experts. They had applied for a certificate on a point of law and were granted one by the High Court. They implored the Court to have due regard to substantive justice required in this long dated Land dispute. They urged that the Court should not be influenced by the technicalities of the law and should proceed to hear the appeal.

It is common ground that the appeal originates from the Ward Tribunal, Olturoto Ward, Arumeru District in Land Case (Shauri La Madai ya

Shamba) No 4 of 2004, which rendered its decision on 17/03/2005. From there, the case went to the Arusha District Land and Housing Tribunal (Land Appeal No 1 of 2005) and then to the High Court (Misc. Land Appeal No. 4 of 2006).

Section 47(2) of the Courts (Land Disputes Settlements) Act provides:

*"47(2) 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 (Land Division) certifying that there is point of law involved in the appeal".*

The record bears out that on 9/04/2009 the appellants by Chamber Summons under sections 5(1)(c) and 5(2)(c) of the Appellate Jurisdiction Act and Rules 43(a) and 46 of the Court of Appeal Rules, 1979 applied for:

- (a) Leave to appeal to the Court of Appeal against the Judgment and Order passed by the High Court in Civil Appeal No 4 of 2006; and
- (b) a certificate that there are points of law to be adjudicated upon by the Court of Appeal.

In its decision rendered on 21/10/2011, the High Court ruled:

*"orders/certifies that there are points of law worth to be heard by the Court of Appeal of Tanzania.*

***Consequently, this Court grants leave for all the six (6) intended grounds of appeal to be lodged before the Court of Appeal of Tanzania for adjudication".(Emphasis added)***

It went on to list the terms of the six grounds of appeal to be presented by the appellants to the Court of Appeal. The High Court granted the application with costs.

After a close examination of the points raised and having considered the submissions, **first**, we are of the settled view that the application before the High Court was incompetent as it was moved on a wrong provision of the law to issue a certificate that points of law were involved in the appeal for determination by the Court. Section 5(2)(c) of the Appellate Jurisdiction Act governs a certificate that a point of law is involved in an appeal under the Magistrates' Court Act, Cap 11 R.E. 2002 originating from a primary court (See, **Omari Yusufu v Mwajuma Yusufu and Another** (1983) T.L.R. 29; **Harban Haji Mosi and Another V Omar Hila Seif,**

Civil Reference No 19 of 1997 (CAT, unreported) and not from an appeal originating from the Ward Tribunal, as is the instant case. The requisite certificate on a point of law for an appeal originating from the Ward Tribunal is issued under section 47(2) of the Courts (Land Disputes Settlement) Act. The omission by the appellants to cite section 47(2) was fatal (See, **Antony J. Tesha V Anita Tesha**, Civil Appeal No. 10 of 2003; **China Hanan Int. Cooperation Groups V. Salvand K. A. Rwegasira**, Civil Reference No. 22 of 2005 (all CAT, unreported). Moved in the manner it was, there was no proper application before the High Court on which a certificate on a point of law in the intended appeal originating from the Ward Tribunal could have been validly issued.

**Second**, assuming that the High Court was properly moved, can it be correctly held that it had issued a certificate on a point of law as required by law? With respect, we do not think so. A combined reading of the ruling of the High Court reveals that what it granted the appellants was essentially leave to appeal to the Court of Appeal against the decision of the High Court in Misc Land Appeal No 4 of 2006 (Longway, J). It went even further to spell out six grounds of appeal on which the leave to appeal was allowed. As succinctly submitted by Mr. Lawena, no such leave

to appeal is required under the Courts (Land Disputes Settlement) Act for an appeal originating from the Ward Tribunal, as is the case at hand. Considering the whole matter and in fairness, the High Court may have been misled by the combined nature of the application before it, seeking the grant of both leave to appeal to the Court of appeal and a certificate that a point of law is involved in the intended appeal. The decisive point however, remains that the High Court was wrongly moved under sections 5(1)(c) and 5(2)(c) of the Appellate Jurisdiction Act. As such, the application before it was incompetent and no valid certificate on a point of law could have been issued.

We are well aware of the need to be instructed by substantive justice without due regard to technicalities of the law, but this requirement does not do away all together with the prescription provided by law and rules of procedure in the administration of justice (See, **Amiri Athumani V The D.P.P.**, Criminal Appeal No 2 of 2008 (CAT, unreported)). More important, the crucial issue at stake in the appellants' application at the High Court was one of jurisdiction and by the yardstick of the law, was fundamental to the determination of the matter.

In conclusion and for the above reasons, we are constrained to hold the purported appeal incompetent and accordingly strike it out with costs. The preliminary objection is hereby upheld.

It is so ordered.

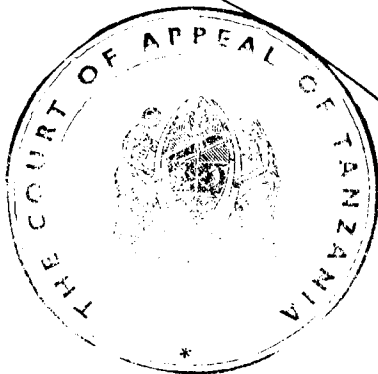
DATED at ARUSHA this 1<sup>st</sup> day of October, 2012.

M. C. OTHMAN  
**CHIEF JUSTICE**

N. P. KIMARO  
**JUSTICE OF APPEAL**

S. A. MASSATI  
**JUSTICE OF APPEAL**

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



M. A. MALEWO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**