

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

**(CORAM: JUMA, C.J., MUGASHA, J.A., And LILA, J.A.)**

**CIVIL APPEAL NO. 93 OF 2017**

**NDAMO GAMAYA.....APPELLANT**

**VERSUS**

**LUHENDE SENI DARUSHI (As administrator of  
the estate of the late MICHAEL MIKANDA.....RESPONDENT**

**(Appeal from the decision of the High Court of Tanzania  
at Tabora)**

**(Rumanyika, J.)**

**dated the 23<sup>rd</sup> day of August, 2013**

**in**

**Land Appeal No. 45 of 2012**

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**JUDGMENT OF THE COURT**

**9<sup>th</sup> & 15<sup>th</sup> February, 2018**

**LILA, J.A.:**

The appellant, Ndamo Gamaya, having lost before the High Court on second appeal, seeks to assail that decision in this third appeal.

The background of the matter as discerned from the record can be prefaced as follow: Michael Mikanda, now deceased, instituted a suit against the appellant, before the Ward Tribunal of

Igurubi within Igunga District in Tabora Region claiming ownership of a piece of land the size of which was not disclosed, allegedly invaded and occupied by the appellant. That land belonged to his late father one Mikanda Dotto. Dotto Mikanda, one of the sons of Mikanda Dotto remained in occupation of that land when Michael Mikanda shifted to Munge area in Nzega District. The appellant claimed to have bought that piece of land from Dotto Mikanda. The Ward Tribunal found in favour of Michael Mikanda on the ground that, such land belonged to the family of Mikanda Dotto hence Dotto Mikanda could not sell it without consent of other members of the late Mikanda Dotto.

The appellant successfully appealed to the District Land and Housing Tribunal for Tabora at Tabora. The District Land and Housing Tribunal held that Dotto Mikanda owned that land and properly sold it to the appellant. Aggrieved, Michael Mikanda appealed to the High Court. He was successful. The High Court (Rumanyika, J.), as was the Ward Tribunal, was of the firm view that, the Land in question belonged to the family of Mikanda Dotto. Thus, Dotto Mikanda being just one amongst the family members could not sell it without involvement of other members.

Dissatisfied, the appellant has preferred the present appeal.

The appellant lodged a three-point memorandum of appeal. It is couched thus:

- "1. The Honourable Judge did not consider whether the proceedings in the Land Appeal No. 39 of 2012 before the District Land and Housing Tribunal were properly conducted.*
- 2. The Honourable Judge misapprehended the evidence on part of the appellant and wrongly held that the appellant failed to show when exactly his occupation of 12 years started.*
- 3. The Honourable Judge failed to appraise the appellant's evidence and his witness".*

At the hearing of the appeal, the appellant personally appeared and was represented by Mr. Kamaliza Kamoga Kayaga, learned counsel. Following death of Michael Mikanda, Mr. Luhende Seni Darushi, a duly appointed administrator of the estate of the late Michael Mikanda, appeared for the respondent.

Alive of the fact that the matter originated from the Ward Tribunal hence requiring certification of points of law for consideration by the Court, we, at the outset raised *suo motu* a two limbed issue to satisfy ourselves before we could proceed to hear the appeal on merits. We wanted to know whether the points certified by the High Court as reflected at page 136 of the record are really points of law and if so, whether the grounds of appeal lodged by the appellant in this Court reflect the contents of the points of law certified by the High Court both in nature and substance. We accordingly asked the parties to address us on that issue.

Mr. Kayaga did not mince words. He quickly conceded that the points certified by the High Court are not points of law so to speak. They are factual issues which require consideration and analysis of the evidence to resolve them.

In respect of whether the grounds of appeal lodged in this Court tally both in nature and substance with the points certified by the High Court, Mr. Kayaga, again, conceded that they do not. Bearing in mind the above anomalies which are fatal, he said, it is

as if there are no grounds of appeal. Consequently, the appeal before the Court is incompetent, he said. He accordingly urged the Court to strike out the appeal.

The respondent, a layperson, this being a legal issue had nothing to say. He left the matter for the Court to decide.

The record bears out, and as demonstrated above, that the matter originated from the Ward Tribunal of Igurubi Ward (Shauri la madai Na. 6/2012) and went up the ladder of justice on first appeal to the District Land and Housing Tribunal for Tabora at Tabora (Land Case Appeal No. 39 of 2012) and then to the High Court of Tanzania sitting at Tabora (Misc. Land Case Appeal No. 45 of 2012) on second appeal.

We are well aware that the provisions of section 47(2) of the Land Disputes Courts Act, Cap. 216 R.E. 2002 sets a prerequisite condition before instituting an appeal to the Court that the appellant is required to apply for and obtain a certificate from the High Court that there is a point of law involved in the appeal for determination by the Court. (See **Marco Kimiri and Another Vs. Naishoki**

**Eliu Kimiri**), Civil Appeal No. 39 of 2012 (unreported)). It therefore goes without saying that appeals from the Ward Tribunal to the Court are on points of law only.

In the instant appeal the appellant applied and obtained a certificate on points of law from the High Court on 4/6/2015. The points certified were:

- "1. Whether the respondent the late Michael Mikanda had locus standi to institute the proceedings claiming the disputed property on behalf of the late Mikanda Dotto without being appointed as the administrator of the estate.*
- 2. Whether there was any justification to disposes the applicant the disputed land.*
- 3. Whether the applicant who occupied the land is not entitled to any compensation.*

The central issue for determination by the Court is whether or not the above points as certified by the High Court are points of law.

The glaring question calling for an answer is what is meant by a phrase "a point of law"?

Unfortunately, the Land Disputes Courts Act, Cap 216 R.E. 2002, the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 and the Tanzania Court of Appeal Rules, 2009 do not provide for a definition of what is a point of law. However, this is not a virgin area. The Court in the case of **Hezron M. Nyachiya Vs. Tanzania Union of Industrial and Commercial Workers and Another**, Civil Appeal No. 79 of 2001(unreported) stated that there can be no pure point of law where there are facts that require proof by evidence.

We can also be assisted by the Court's decision in the case of **Mukisa Biscuit Manufacturing Co. Ltd. Vs. West End Distributors Ltd.** [1969] 1 EA 696 at page 701. When elaborating on what a preliminary objection is the Court stated:

***"... It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained..." (Emphasis added).***

It can, given the above findings of the Court, safely be said that to constitute a point of law, that point should be free from the need to ascertain it by evidence.

Gauged on the above yard stick it is apparent that neither of the points certified by the High Court qualifies to be points of law. The first point certified by the High Court requires evidence to prove that Michael Mikanda applied and was granted letters of administration of the estate of Mikanda Dotto, his late father, before instituting his claims over the piece of land in the Ward Tribunal.

Similarly, for the second point, evidence is required to establish whether or not the appellant's dispossession of the land was justified. And, lastly, for the third point, evidence is required to prove whether or not the appellant occupied the disputed land for



over 12 years and effected any exhaustive improvement entitling him to any compensation.

Given the nature and substance of the points certified by the High Court it cannot, therefore, be held that a certificate on a point of law was issued as required by law. A close reading of the points certified reveals that what the High Court actually granted the appellant were grounds of appeal. As such and as rightly argued by Mr. Kayaga, no valid certificate on points of law was issued.

In view of the provisions of section 47(2) of the Land Disputes Courts Act it is those points of law certified by the High Court which should constitute the grounds appeal before the Court. Since we have held that the points certified were not points of law then it goes without saying that there was nothing to be placed before the Court for determination. To borrow Mr Kayaga's words, it is as if there are no grounds of appeal. Consequently, the appeal was filed in clear violation of the provisions of section 47(2) of the Land Disputes Courts Act which requires a certificate on a point of law. As such, the purported appeal before us is incompetent.

For the foregoing reasons, we are constrained to hold that the purported appeal is incompetent for want of a valid certificate on a point of law. We accordingly strike it out. As the issue was raised by the Court *suo motu*, we order each party to bear its own costs.

**DATED** at **TABORA** this 13<sup>th</sup> day of February, 2018.

I. H. JUMA  
**CHIEF JUSTICE**

S. E. A. MUGASHA  
**JUSTICE OF APPEAL**

S. A. LILA  
**JUSTICE OF APPEAL**

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



A.H. MSUMI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**