

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

(CORAM: WAMBALI, J.A., KITUSI, J.A. And MASHAKA, J.A.)

CIVIL APPEAL NO. 461 OF 2020

IDI TANU APPELLANT

VERSUS

ABILO NYAMSANGYA RESPONDENT

**[Appeal from the Judgment and Decree of the High
of Tanzania at Musoma]**

(Kahyoza, J.)

Dated the 24th day of July, 2020

in

Miscellaneous Land Appeal No. 27 of 2020

RULING OF THE COURT

2nd & 5th November, 2021

KITUSI, J.A.:

Idi Tanu, the appellant, and Obilo Nyamsangya, the respondent, have been battling over a piece of land situated at Masonga Village within Tai Ward, in Rorya District. The details of the dispute are intricate but not necessary for the purpose of this ruling. It is enough to observe that the dispute commenced at Masonga Village Council, then it proceeded to Tai Ward Tribunal, followed by an appeal to the District Land and Housing Tribunal (DLHT) for Tarime, after which the parties

went to the High Court on appeal, preferred by the present appellant. The High Court dismissed the appeal.

Dissatisfied with the decision of the High Court, the appellant has come to the Court on yet another appeal, seeking to challenge that decision. Aware that this appeal requires a certificate on a point of law, we drew the parties' attention to that fact and asked them to address us on the competence of this appeal. Being unrepresented, the parties had difficulty comprehending our point, but they addressed us, all the same.

After disclosing the fact that he has been relying on advice from a member of his family who is a trained lawyer, the appellant prayed for an adjournment so that he may seek advice from him with the view of obtaining the requisite certificate. On the other hand, the respondent resisted the prayer, accusing the appellant's relatives for being the architects of his unlawful occupation of the suit land. In a short rejoinder the appellant prayed for time within which he may process the certificate and proceed with this appeal.

Our determination of this point of argument is going to be simple because the law is explicit, that appeals to this Court on land matters that commenced at the Ward Tribunal require certificate on a point of

law in terms of section 47(3) of the Land Disputes Courts Act [Cap. 216 R.E. 2002]. This is also what the Court said in the case of **Ndamo Gamaya vs Luhende Seni Darushi**, Civil Appeal No. 93 of 2017 (unreported).

The appellant's prayer for an adjournment so that he may process and obtain the missing certificate is, in our view, a confirmation that there is no such certificate on a point of law in this appeal. The scheme for applying for leave to appeal to the Court or for a certificate on a point of law, is provided under rule 46(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules), which is: -

"46(1) where an application for a certificate or for leave is necessary, it shall be made after the notice of appeal is lodged."

This Court has made decisions on the above Rule in cases like **Arunaben Chaggan Mistry vs Nushad Mohamed Hussein & 3 Others**, Civil Application No. 40 of 2015 and **Felister Magayane vs Mabula Genge**, Civil Application No. 28/08 of 2019 (both unreported).

In our view, the above provision as well as logic, does not envisage an appellant trying to apply for a certificate on a point of law

after he/she has already lodged the appeal. That will be placing the horse before the cart, so to speak.

It is enough to conclude that this appeal is incompetent for want of a certificate on a point of law, and the appellant's prayer for an adjournment is a misconception because we cannot adjourn an appeal which does not exist. For those reasons, this appeal is hereby struck out with costs, for being incompetent.

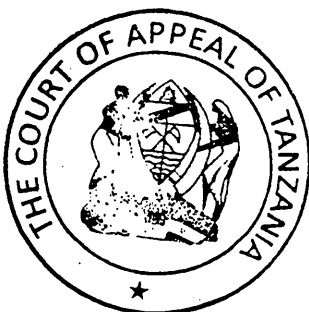
DATED at MUSOMA this 4th day of November, 2021.

F. L. K. WAMBALI
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

L. L. MASHAKA
JUSTICE OF APPEAL

The Judgment delivered this 5th day of November, 2021 in the Presence of both the Appellant and Respondent in person, is hereby certified as a true copy of the original.



F. A. Mtaranja
F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL