

**IN THE HIGH COURT OF TANZANIA**

**AT DODOMA**

**MISCELLANEOUS LAND CASE APPLICATION NO. 46 OF 2016**

*(From Misc. Land Case Appeal no. 40 of 2012 of the High Court of Tanzania, Originating in the District Land and Housing Tribunal of Kondo Land Case Appeal no. 85 of 2011 from Land Case No 17 of 2011 of Jangalo Ward Tribunal)*

**HAMISI MISANYA ..... APPLICANT**

**VERSUS**

**RASULI MOHAMED.....RESPONDENT**

**RULING**

**27<sup>th</sup> April & 20<sup>th</sup> June, 2017**

**KWARIKO, J.**

The applicant, Hamisi Misanya filed this application in terms of section 47(1) and (2) and section 48 (1) of the Land Disputes Courts Act [Cap 216 R.E 2002] and section 5 (1) (c) of the Appellate Jurisdiction Act R.E 2002 (sic) Read together with rule 45 (a) Of the Court of Appeal Rules 2009 seeking leave of this court to appeal to the Court of Appeal of Tanzania against the decision of this court (Misc. Land Case Appeal No. 40 of 2012) on point of law. The application has been supported by the applicant's affidavit.

It should be noted from the outset that an application of this nature where the matter originates from the Ward Tribunal section 47(2) of the Land Disputes Courts Act (supra) and Rule 45 (a) Of the Court of Appeal Rules, 2009 are relevant enabling provisions of law hence the rest are redundant.

On the other hand respondent did not appear as he declined service before the Village Executive Officer of Jangalo. There is a letter to that effect dated 24/9/2016. Therefore, the application was heard ex parte.

In his submission in support of the application the applicant contended that he was aggrieved by the decision of this court by Mohamed, J as the disputed land belongs to him and the respondent is a young boy compared to him; that he cleared the land in 1974.

Thus, the court is required to decide whether the application has merit.

Section 47 (2) of the Land Disputes Courts Act (supra) provides thus;

*(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 certifying that there is point of law involved in the appeal.*

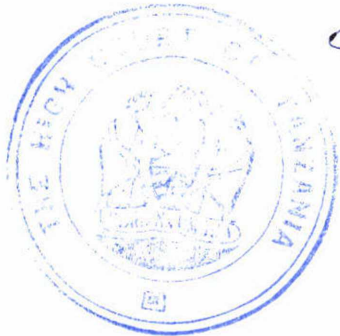
*(3) The procedure for appeal to the Court of Appeal under this section shall be governed by the Court of Appeal Rules.*

Hence, according to this law as this matter originated in the Ward Tribunal of Jangalo the applicant ought to apply before this court for a Certificate to certify that there is a point of law involved in the appeal. Thus, it can be seen that the applicant is applying for leave of this court to appeal to the Court of Appeal on a point of law. As already shown, this is not what the cited law needs.

However, even if the applicant has correct prayer but the court finds that he has not shown in his affidavit any point of law as required to be certified by this court to the Court of Appeal; it is the applicant who ought to reveal the point of law involved for this court to consider before it grants or refuses the application. It is not the duty of the court to speculate.

Now, since there is no any point of law raised by the applicant this court finds that the application has no merit and is hereby dismissed and order for costs as the respondent did not appear.

Order accordingly.



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**M.A. KWARIKO**

**JUDGE**

**20/6/2017**

Ruling delivered in court today in the presence of the Applicant and Ms. Judith Court Clerk.



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**M.A. KWARIKO**

**JUDGE**

**20/6/2017**

**Court:** Right of Appeal Fully Explained.



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**M.A. KWARIKO**

**JUDGE**

**20/6/2017**