

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)**

AT ARUSHA

MISC CIVIL APPLICATION NO. 72 OF 2018

(Arising from the High Court of Tanzania at Arusha (Madam Justice MUSHI) dated 9th of August, 2018 in PC Civil Appeal No. 45 of 2017)

RITA ALEX MAROAPPLICANT

VERSUS

EMMANUEL ALEX MARO 1ST RESPONDENT

BRUCE ALEX MARO 2ND RESPONDENT

EVA ALEX MARO 3RD RESPONDENT

MAIGE, J

RULING

Before me is an application for certification that some points of law are involved in the intended appeal. The application is preferred under section 5(1) © and (2) © of the Appellate Jurisdiction Act (Cap. 141 R.E. 2002).

The decision for which the grant of certificate is sought was delivered by my learned sister judge S.C. Moshi, J, on 9th day of August 2018. It was in respect of a decision of the District Court Arusha in Civil Appeal No. 45 of 2017. It was therefore a decision on second appeal which in law would not be appealed against without there being certification, by the High Court, on the existence of some points of law in the intended appeal.

In the conduct of this application, the applicant was represented by Gwakisa Sambo, learned advocate whereas the respondent by Mr. Asubuhi Yoyo, learned advocate. By the leave of the Court, the application was disposed of by way of written submissions which were filed in due compliance the scheduling order. I thank the counsel for their instructive submissions which have been duly considered.

The chamber summons initiating the application is premised on the affidavit of the applicant consisting the factual grounds in support of the application. What the applicant believes to be pertinent points of law for determination by the Court of Appeal have been pinpointed in the proposed memorandum of appeal which is referred in paragraph 5 of the affidavit. It has been exhibited in the affidavit as "R-3". In paragraph 6 of the counter affidavit deposed by advocate Yoyo, the respondent takes the points listed in exhibit **R-3** as mere evidential points.

I have examined the depositions in paragraph 5 of the affidavit and gone through the Judgment. The genesis of the instant appeal is the decision of the primary court of Arusha Urban ("the trial court") revoking its letters of administration granted in favour of the applicant. Believing that the administration was duly discharged and the matter closed, the applicant thought that the **trial court** was *functus officio* to entertain the application.

Her attempt to challenge the decision by way of appeal to the District Court proved futile. The **first appellate court** confirmed the decision of the **trial court**. Once again aggrieved, the applicant unsuccessfully appealed to this Court. The High Court did not accept the applicant's proposition that the probate and administration proceedings at the **trial court** had already been closed when the application for revocation was being preferred. In the opinion of the Court, the proceedings of the **trial court** should have reflected proof of among others, that the beneficiaries were summoned to the court to confirm the correctness of the inventory.

In the proposed memorandum of appeal, the applicant has enumerated 10 grounds of the intended appeal. In the 6th, 7th 9th and 10th thereof, the High Court is faulted in not properly evaluating the evidence. With respect, I agree with Mr. Yoyo that these are pure points of facts which cannot justify a third appeal to the Court of Appeal.

The proposed 2nd, 4th , 5th and 7th grounds of appeal are based on the proposition that the probate and administration proceedings at the **trial court** had already been closed when the application for revocation was being filed. These sound, in my view, to be mixed points of facts and laws. They would only stand as points of law if it was established that the said proceeding was already closed when the application was being held. The High Court, as I have pointed out above, resolved the issue in the affirmative. It can thus be said that the said proposed grounds were not founded on the judgment.

In the first and third proposed grounds of appeal, the applicant intends to fault the High Court for failure to abide to the established law and principles governing probate and administration proceedings in primary courts and thereby arriving at erroneous decision. On face of it, this would sound as a

point of law. I will therefore certify, as I hereby do that; the affidavit demonstrates one important point of law namely; *whether the High Court correctly applied the law in holding that the probate and administration proceeding at the trial court had already been closed when the application for revocation of the grant was being instituted?*

For the foregoing reasons and to the extent as afore stated, I will grant the application and hold that some points of law exist which would justify an appeal to the Court of Appeal. The application is thus granted with costs.

It is so ordered.



MAIGE.I

JUDGE

13.11.2018

Ruling delivered this 13th day of November in the presence of advocate Emmanuel Kileo for the applicant who is also holding brief for advocate Yoyo for the respondent.



MAIGE.I

JUDGE

13.11.2018