

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. LAND CASE APPLICATION NO. 232 OF 2017

(HC. Misc. land Appeal No. 30 of 2017)

SARANGA WAMBURA (Administrator of
the Estate of **WAMBURA NUNGU** **APPLICANT**

VERSUS

1. ELIZA LUKIKO
2. MUSSA MAGAMBO **RESPONDENTS**

RULING

23/08/2018 & 21/01/2019

RUMANYIKA, J.:

Application under Section 47 (2) of the Land Disputes Court Act Cap. 216 R.E. 2002 (the Act) is for certification by this court of points of law (emanating from the 11/10/2017 decision of this court). It is supported by affidavit of Saranga Wambura. Whose contents Ms Rose E. Ndege learned counsel adopted during the hearing. The respondents appeared in person.

The points for certification may be reproduced as hereunder:-

- (a) whether the appeal tribunal was correct in law in making findings on issues not pleaded nor addressed by the parties.

- (b) the legality or otherwise of an oral agreement of sale of land by the village council.
- (c) whether the Ward tribunal had jurisdiction to entertain the matter improperly constituted.
- (d) whether an issue not pleaded nor addressed at the trial and first appellate court by either party could be raised by the court at 2nd appellate stage.

Having declared and abandoned point no. (a), and with regard to issue on credibility evidence, the learned counsel submitted that it was not clear whether the local village council had allocated it in 1981 or 1991. Much as also no individual could have been allocated land without approval of the village council (cited case of **Metusela Paulo Nyagwaswa Vs. Christopher Nyirabu** (1995) TLR 103 (CA). No written agreement or something no recognized allocation.

The 2nd respondent submitted that with a jointly 2 women seating the coram was ok. Much as total number of members was between 4 – 8.

That the non-administrator of the estate appellant had no **locus standi** and no members of the house hold supported him.

The issue is whether there is worth the name points of law this court to certify. **Section 5 (1) (c) of the Appellate Jurisdiction Act Cap. 141 R.E. 2002**, for this case read together with Section 47 (2) of the Act required that a 3rd appeal only needs to be on pure point of law.

The points are as follows:-

One; whether credibility or otherwise of the evidence on record was a point of law. The answer is no. Not only it is factual, but also all depend on assessment made by the judge. **It is not certified.**

Two; issues not at the trial pleaded and addressed by parties but forming basis of court decision or only raised at appeal stage ? As a matter of principle, the answer is in the negative. However, the applicant did not tell or even show which issues were not earlier on raised but now forming basis of decision or in disguise raised at appeal level. I would have nothing to certify.

Three; with regard to legality or otherwise of oral agreement, I could not at once understand the applicant on this one. Much as the issue could be only whether the 1st respondent had anything to sell to the 2nd respondent (title passed)? The point, if at all not worth of being certified.

Four; composition of the trial tribunal may have had, in terms of gender been, or not been proper fine! But it is only substance, not the composition of the court that counts. Ends of justice cannot be that casually defeated. That one in my considered opinion is logic and dictates of the principle of overriding objective. Equally, I would not certify the point.

However, looking at decision of the first appellate tribunal nullifying the proceedings, it was built only on a single ground essentially, that being no administrator of the estate, it was no way even a representative suit, and that appellant had no *locus standi*, in deed the proceedings was a

nullity. Leave alone findings of this court that the appellant's claims were, from the start time barred.

I will now find and certify two points as under:

1. The issue whether only by virtue of being a member of house hold one had automatic rights to take up and on that behalf prosecuted the matter.
2. Whether the applicant's claims were, from the beginning time barred, the two points are hereby certified.

Application is only to that extent granted. Each party shall bear their costs. Ordered accordingly.

Right of appeal explained.


S.M. RUMANYIKA
JUDGE
16/01/2019

Delivered under my hand and seal of the court in chambers this 21st January, 2019 in the presence of Ms. Neema Birai for the applicant and 1st and 2nd respondents in person.




M.A. Moyo
DEPUTY REGISTRAR
21/01/2019