

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**MISCELLANEOUS LAND CASE APPLICATION NO. 33 OF 2018**

(Originating from HC Mwanza Land Appeal No. 88 of 2016)

**MAKUNGU TANGAWIZI ..... APPLICANT**

**VERSUS**

**YOHANA NKALI ..... RESPONDENT**

**RULING**

**11/10/2018 & 24/01/2019**

**RUMANYIKA, J.:**

Application for a certificate on point of law, with regard to a 2<sup>nd</sup> appeal judgment and decree dated 22/12/2017 of this court is brought under Section 47 (2) of the Land Disputes Courts Act Cap. 216 R.E. 2002 (the Act) and Rule 45 (a) of the Tanzania Court of Appeal Rules, 2009 (the Rules). It is supported by affidavit of MakunguTangawizi. Whose contents essentially the applicant herein adopted during the hearing.

Like the applicant, Yohana Nkali (the respondent) appeared in person.

Very briefly, the applicant submitted that having herein lost a 2<sup>nd</sup> appeal (original Application No. 01 of 2011 and Appeal No. 215 of 2011 of Kongolo Ward and Mwanza District Land and Housing Tribunals)

respectively, he took necessary steps namely lodging a notice of appeal on 18/01/2018 to the Court of Appeal of Tanzania (the CAT).

That points of law worth being determined by the TCA and for which a certificate was now sought were:-

- (i) Whether it was proper for the learned appellate judge to uphold decision of the Kongolo Ward Tribunal, while the evidence adduced by the appellant shows that the disputed land belonged to the appellant's farther.
- (ii) Whether it was proper for the appellate judge to decide that evidence of the appellant's witnesses contradicted each other.
- (iii) Whether it was proper for the appellate judge to decide that evidence of the respondent's witness show that there was a boundary "TUTA" between land owned by the appellant and respondent.

When the application was called on 11/10/2018, though duly served, (reportedly on 17/03/2018), the respondent had, for no apparent reasons not filed a counter affidavit. Pursuant to my order of 11/10/2018, applications was considered as the non-contested one.

However, the applicant submitted nothing material. He just asked me to consider contents of the supporting affidavit. More so the three points for certification. That is it.

The issue is whether the three points advanced by the applicant are worth of being certified. They are not!

Provisions of Section 47 (2) of the Act and Rule 45 of the rules only concern with pure points of law. Not points of facts. The issue of factual evidence and its analysis/evaluation giving rise to a court decision is, frankly speaking not point (s) of law. It would have been a different case if, for instance the applicant complained that such a witness(s) was in law not capable of giving the evidence or, if anything, that the court misapprehended the evidence.

Application is dismissed with costs. Ordered accordingly.

Right of appeal explained.



**S.M. RUMANYIKA**  
**JUDGE**

**19/01/2019**

Delivered under my hand and seal of the court in chambers this 24<sup>th</sup> day of January, 2019 in the presence of the applicant and in absence of the respondent.



**O.H. Kingwele**

**DEPUTY REGISTRAR**

**24/01/2019**