

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

**AT KIGOMA**

**(LAND DIVISION)**

**APPELLATE JURISDICTION**

**MISC. CIVIL APPLICATION NO. 2 OF 2020**

*(Arising from Misc. Land Appeal No. 1 of 2019 of High Court Kigoma, from Land Appeal No. 116 of 2014 of Kigoma DLHT, Original Land Dispute No. 13 of 2014 of Bugaga Ward Tribunal)*

**MATHIAS S/O LUHANA..... APPLICANT**

**VERSUS**

**JERADI S/O HARUNA .....RESPONDENT**

**R U L I N G**

*28/05/2020 & 04/06/2020*

**I.C. MUGETA, J**

The applicant lost a case to the respondent in the Ward Tribunal of Bugaga Ward. He had claimed that the respondent trespassed into his land. The Ward Tribunal decided that he had wrongly sued the respondent. This finding was based on the observation of the Ward Tribunal when it visited the "*locus in quod*". Thereat, the applicant showed the dispute land where it was established that that land had been cultivated by a person other than the respondent. The application was dismissed by the Ward Tribunal. On appeal, the finding was upheld by the District Land and Housing Tribunal for Kigoma District and later by this court (Hon. Matuma, J.) for the same

reason. The applicant is aggrieved and he would wish to appeal to the Court of Appeal. He is now seeking a certificate of law in terms of section 47 (2) of the Land Disputes Courts Act [Cap. 216 R.E. 2019] (the Act).

Section 47 (2) of the Act provides:-

*"Where the 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 (Land Division) certify that there is a point of law involved in the appeal".*

The issues which he wishes me to certify as points of law per the affidavit supporting the application are seven. These are:-

(i) *Whether the trial Tribunal going by the name of Bugaga Ward Land and Housing Tribunal exists.*

It is my view that this is indeed a point of law. However, it is not worth a certificate because it is the applicant himself who filed a case before that tribunal.

(ii) *Whether the decision and orders given by the purported trial Ward Tribunal including its secretary are valid decision and orders.*

It is my view that the argument advanced is not a pure point of law. It is a mixture of matters of facts and law.

(iii) *Whether the principle of long possession was correctly invoked by the 2<sup>nd</sup> appellate court.*

On this issue my brother Matuma, J. held:-

*"In the circumstances, be it that the appellant has been in long possession of the dispute shamba, or that Jeradi Haruna had trespassed therein in 2002 and then stopped, I am of the view that at the time the appellant instituted his claim he assumed that his trespasser in 2002 is the one who has again trespassed in 2014".*

In the context of that judgment, the doctrine was applied in favour of the applicant who was the appellant. This notwithstanding, this was an orbiter dictum. My understanding of the judgment is that this court decided the appeal on the principle that the applicant sued a wrong party. My brother concluded.

*"The appellant should go back and sue the actual trespasser"*

I see nothing to certify as a point of law basing on the principle of long possession.

(iv) *Whether the law governing inheritance was correctly observed by the 2<sup>nd</sup> appellate High Court.*

Unfortunately, the concerned principle is not stated. Despite that I hold that no point of law has been disclosed. This court never decided any issue relating to inheritance.

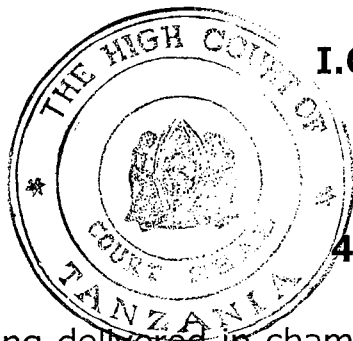
(v) *Whether the 2<sup>nd</sup> appellate High Court was justified to depart from the claim registered by the trial ward tribunal and the sketch map of the disputed land thereby grating to the respondent the dispute land plus the undisputed land.*

This point is not only a matter of fact but also a point which was not decided by this court. This court confirmed the decisions of both lower tribunals. It never made any departure.

(vi) *Whether there existed a counter claim or a counter appeal by the respondent.*

It is my view that I see no point of law to certify in this argument. Whether there was a counter claim or appeal are matters of facts not law. It is even a novel argument which arises for the first time at this stage.

In the event, I find the application without merits. There is no points of law established which I can certify to the Court of Appeal. The application is dismissed with costs.



*Mugeta*  
**I.C. Mugeta**

**Judge**

**4/6/2020**

**Court:** Ruling delivered in chambers in presence of the applicant and the respondent in person.

**Sgd: I.C. Mugeta**

**Judge**

**4/6/2020**