

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA

MISC. LAND APPLICATION NO. 8 OF 2020

*(From the High Court of Tanzania at Mbeya, Misc. Land Application No. 3 of 2019
from the District Land and Housing Tribunal for Rungwe Land Appeal No.
9/2018 and Original Land Case No. 37 of 2017 of Ndato Ward Tribunal)*

ANYAMBWILE PESAMBILI MWANJOKA APPLICANT

VERSUS

KALISTA GEOFREY SHAO RESPONDENT

RULING

Date of Last Order: 18. 06.2020

Date of Ruling: 18. 06.2020

DR. MAMBI, J.

This ruling emanates from the preliminary objection raised by the respondent on the application filed by the applicant. Earlier the applicant filed his application for certificate to appeal to the Court of Appeal against the decision made by this Court.

When the matter was scheduled for hearing, the respondent through the learned Counsel Mr Ignas raised a preliminary objection that the application is incompetent since it was filed contrary to the law. In her submission, the respondent Counsel briefly argued that since the matter originated from this DLHT there was need for certificate and the applicant was only required to seek for leave as per section 47 (2) of the Land Disputes Court Act, Cap 216.

In reply, the applicant briefly submitted that the preliminary objection by the respondent to some extent has merit since. He thus prayed that if the matter is struck out, then the court should order for costs.

I have keenly gone through and considered the points of preliminary objections raised by the respondent in line with the reply by the appellant. The main issues in my considered view whether this application is proper or competent before this court or not. The Respondent in his key points of preliminary objection has raised the point that the applicant was only required to seek for leave and not certificate as he did.

I have indeed thoroughly gone through the submissions by both parties. It is clear from the records that the applicant has filed his application under section 47 (2) of the Land Disputes Court Act, Cap 216 of 2012 as amended. The question before this court is, was the applicant required to apply for certificate or leave of this court.

In this regard I wish to refer section 47 (2) of the Land Disputes Court Act which reads as follows;

“(1) Any person who is aggrieved by the decision of the High Court (Land Division) in the exercise of its original, revisional or appellate jurisdiction, may with the leave from the High Court (Land Division) appeal to the Court of Appeal in accordance with the Appellate Jurisdiction Act, 197

*(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 (Land Division) 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, 1979”.

Reading from lines above paragraph, it is clear it only when the matter originates from the Ward Tribunal that is when the appellant shall be required to seek for the Certificate. Now since the matter at hand did not originate from the Ward Tribunal the applicant was only required to seek for leave and not Certificate as he did.

Having found that the applicant wrongly filled his application to this court, the only remaining question before me will now be, whether there is any application before this court. In my considered view, since the applicant did not comply with the mandatory requirements of the law, it is as good as saying there is no application at this court. I wish to refer the decision of the court in **Joseph Ntongwisangue another V. Principal Secretary**

Ministry of finance & another Civil Reference No.10 of 2005

(unreported) where it was held that:

“... Experience shows that the litigations if not controlled by the court, may unnecessarily take a very long period and deny a party in the litigation enjoyment of rights granted by the court.

Reference can also be made to the decision of the court of Appeal of Tanzania in **The Director of Public Prosecutions v. ACP Abdalla Zombe and 8 others** Criminal Appeal No. 254 of 2009, CAT (unreported) where the court held that:

“this Court always first makes a definite finding on whether or not the matter before it for determination is competently before it. This is simply because this Court and all courts have no jurisdiction, be it statutory or inherent, to entertain and determine any incompetent proceedings.”

From what I have observed, I am constrained to hold that the application before this court is fatally incompetent. From the reasons stated above, I am of the settled view that the application before this court is incompetent. Since the application is incompetent I don't see any reasons for discussing the other grounds of preliminary objections that have been raised. I therefore hold that there is no any application before me in this court. In the default of wrongly filling this application, the present application is certainly not proper before this Court. It is incompetent and should be dismissed or strike out, as I hereby do.

In the circumstances, the preliminary raised by the respondent is sustained and upheld which means that the intended application is

struck out on the reasons I stated above. Considering the circumstance of the case, I make no order as to costs. If the applicant so wishes, he may file his application.




DR. A. J. MAMBI
JUDGE

18.06. 2020

Ruling delivered in Chambers this 18th day of June, 2020 in presence of both parties.


DR. A. J. MAMBI
JUDGE

18.06. 2020

Right of appeal is explained.


DR. A. J. MAMBI
JUDGE

18.06. 2020