

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI

MISC LAND APPLICATION NO. 93 OF 2017

(C/f Misc. Land Appeal No. 15 of 2017, High Court of Tanzania at Moshi, Land Appeal No. 63 of 2015 District Land and Housing Tribunal of Moshi at Moshi, Original Land Case No. 03 of 2015 Masama Rundugai Ward Tribunal)

CHEMKA VILLAGE.....APPLICANT

VERSUS

EDWARD KILORESPONDENT

9th July & 27 August, 2020

RULING

MKAPA, J:

The applicant is applying for leave to appeal to the Court of Appeal of Tanzania against the decision of this court (**A.N.M. Sumari, J.**) in **Misc. Land Case Appeal No. 15 of 2017** dated 19th October, 2017. He is seeking for this Court to certify points of law involved in the above decision.

The application is brought under section 47(2) of the Land Disputes Courts Act, No. 2 of 2002 and is supported by affidavit sworn by Idd Jacob Mtambo, chairperson of the applicant. The respondent disputed the application and filed a counter affidavit to that effect.

The court ordered that this application be heard by way of filing written submissions. The applicant was represented by Mr.

Engelberth Boniface Learned Solicitor while the respondent appeared in person unrepresented. Mr. Engelberth submitted that there were two applications admitted by this court with similar issues and same parties namely, **Misc. Land Application No. 93 of 2017 and Misc. Land Application No. 48 of 2018** respectively. Thus he prayed to abandon the latter application and proceeded with the former.

Mr. Engelberth went on submitting the fact that when a land matter originates from Ward Tribunal and a party aggrieved by High Court decision wants to appeal to the Court of Appeal he has to comply with the requirement of section 47 (1) and (2) of the Land Disputes Courts Act, Cap 216 [R.E. 2019]. Mr. Engelberth explained further that, the applicant is seeking for this court to certify points of law worth consideration by the Court of Appeal. To cement his argument he cited the case of **Jerome Michael V Joshua Okanda, Civil Appeal No. 19 of 2014**; CAT at Mwanza (unreported) which held that;

"A person who wants to access the Court of Appeal for the land dispute which originated from the Ward Tribunal is required to seek from the High Court (Land Division) two orders (a) the first one is an order seeking for leave to appeal (b) the second requirement the appellant has to comply with section



47 (2) to get a certificate from High Court that a point or points of law are involved in the matter for determination of the Court of Appeal.”

Mr. Engelberth further explained that the applicant is also seeking Court of Appeal interpretation of section 64 (1) of the Law of Evidence Act, Cap 6, [R.E. 2019] and section 15, 38 (2), (3) and 39 (1) of the Land Disputes Courts Act [R.E. 2019] He faulted, this court in holding that the applicant did not tender documentary evidence evidencing boundaries of Chemka village following the division from Rundugai village in order to prove ownership of the land while the appellant did so at the hearing at the ward tribunal. The appellant also challenged this court for granting 21 acres to the respondent while the exact size of the disputed land was never established.

Mr. Engelberth argued further that Chemka hot spring situated near the suit land and attracts tourist activities renders the value of the suit land to appreciate above three million shillings which is the limited pecuniary jurisdiction of ward tribunal. It was Mr. Engelberth view that failure to describe the size of disputed land touched on the issue of jurisdiction of the Court and the only remedy was to order trial *denovo*. To support this argument he cited the decision of this Court in **Annathe Josephat Massawe, Ufoo Mushi and 80 Others V The Board of**



Registered trustees of Chama cha Mapinduzi & Another,
Land Case No. 02 of 2019 and **Fanuel Mantiri Ng'unda V**
Herman Mantiri Ng'unda (1995) TLR 159 where the court had
this to say:-

*"...it is a risk for the Court to proceed with the trial of
the case while assuming jurisdiction and while there
is a dispute which exceeds pecuniary jurisdiction of
the Ward Tribunal."*

Mr. Engelberth pointed out another issue on point of law which
requires Court of Appeal consideration the fact that the
respondent lodged his appeal direct to the High Court instead of
lodging to the District Land and Housing Tribunal contrary to
section 38 (2) of the Land Disputes Act. Mr. Engelberth
contended that such practice is against the law and sets bad
precedent. He prayed for this court to grant leave so that the
applicant can appeal to the Court of Appeal..

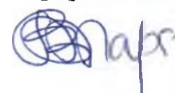
Opposing the application, the respondent submitted that on 20th
February 2018, Ms. Blandina Mweta appeared for the applicant
in **Misc. Land Application No. 93 of 2017** and prayed for the
application to be withdrawn with leave to refile and **Fikirini, J.**
granted the prayer. Further that, since in the applicant's
submission he had decided to withdraw the **Misc. Land**
Application No. 48 of 2018 and proceeded with **Misc. Land**



Application No. 93 of 2017 which had already been withdrawn this means there is no application to be adjudicated by this court. Respondent finally submitted that, applicant's written submission is vague and is as good as no application for leave to appeal or certification on point of law has been filed. He prayed for the same to be dismissed with cost since this court (**Hon. Sumari J**) judgment was clear as the applicant had failed to prove ownership of the disputed land.

In his brief rejoinder, the learned Solicitor reiterated his earlier submission and emphasized the fact that the applicant was not aware of **Misc. Land Application No. 93 of 2018** being withdrawn by Ms Mweta with leave to refile. He went on explaining that, the said Ms. Mweta had since been transferred to Tanzania Rural and Urban Roads Agency (TARURA) since 5th December, 2017, thus it was a surprise to learn that she entered court's appearance on 20th February, 2018 and withdraw the application. He thus prayed for application to be granted as prayed.

Before analysing the merits and demerits of this application I find it pertinent to establish whether this court is properly moved to determine the application sought. I have had the opportunity of perusing court records related to **Misc. Land Application No.**



93 of 2017 the following is what had been transpired in court on 20th February, 2018

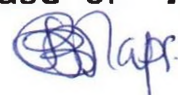
Ms. Mweta: *The matter is coming for mention but I pray to withdraw the application as it needs amendment and I pray so with leave to refile.*

Court: *Application to withdraw granted with leave to refile and there is no order as to costs.*

Order: *Application marked withdrawn with liberty to refile. No order as to costs.*

Sgd P.S. Fikirini
Judge
20/2/2018.

Thereafter nothing had happened in respect of the said application. From the foregoing observation it is plain clear the fact that the Misc. Land Application No. 93 of 2017 had since been marked withdrawn thus both parties submission in respect of the same are nullity. In his rejoinder submission despite the fact that the respondent was made aware of the said withdrawn application he kept on insisted that there were two pending applications without taking trouble of making follow up on the status. The defence by the applicant that the said Ms. Mweta had been transferred is immaterial. It is worth noting the fact that court records are serious documents and should not be lightly impeached as was underscored in the case of **Alex**

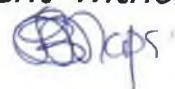


**Ndendya V Republic, Criminal Appeal No. 207 of 2018,
TZCA 202 (unreported)**

The matter which is still pending in this court is **Misc. Land Application No. 48 of 2018**. However, the learned solicitor prayed for its withdrawal and continued with the submission as if this court has already granted the same which in my view amounts to abuse of court process.

In the circumstances the applicant has not filed submission in respect of Misc. Land Application No. 48 of 2018. In **Godfrey Kimbe V. Peter Ngonyani**, Civil Appeal No. 41 of 2014 CAT at Dar es salaam (unreported), the Court of Appeal referring to its decision in **National Insurance Corporation of (T) Ltd & another V. Shengena Limited**, Civil Application No. 20 of 2007 and **Patson Matonya V. The Registrar Industrial Court of Tanzania & another**, Civil Application No. 90 of 2011 (both unreported), held that:

"...failure by a party to lodge written submissions after the Court has ordered a hearing by written submissions is tantamount to being absent without notice on the date of hearing."



Basing on the above principle, I have no hesitation to come to a conclusion that this application has no merit. I accordingly dismiss it with costs for want of prosecution.

It is so ordered.

Dated and Delivered at Moshi this 27th day of August, 2020.




S.B. MKAPA
JUDGE
21/08/2020