

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[IN THE DISTRICT REGISTRY]**

AT ARUSHA

MISC. CIVIL APPLICATION NO. 107 OF 2019

(Originating from Land Application No. 105 of 2015 Muriet Ward Tribunal, Land Appeal No. 75 of 2017 at Arusha District Land and Housing Tribunal and Misc. Land Appeal No. 56 of 2018, High Court at Arusha)

ATHUMAN NDEMERA.....APPLICANT

Versus

STEVEN NDAIYAI.....RESPONDENT

RULING

13/10/2020 & 27/11/2020

MZUNA, J.:

This court is invited to determine on the issue whether there is a point of law for certification and then grant leave to the applicant to appeal to the Court of Appeal. The application is preferred under section 47 (2) of the Land Disputes Courts Act, Cap 216, (Cap 216). The application is supported by an affidavit of Lengai S. Loitha, learned counsel, who also appeared for the applicant.

The respondent through Mr. Daudi Saimalie Lairumbe, learned counsel, vehemently resisted this application in line with the counter affidavit

of the respondent. Hearing of this application proceeded by way of written submissions.

When I was in the process of composing the ruling I noted that the judgment sought to be challenged was determined by the Resident Magistrate with Extended Jurisdiction. I addressed Mr. Lengai Loitha, the learned counsel for the applicant on the legality of this application. His response was that to the best of his understanding this court has jurisdiction to deal with the matter because the Court with extended jurisdiction has the same powers as the Judge sitting in the High court because he/she has delegated powers. Unfortunately, Mr. Daudi Saimalie who represents the respondent did not turn up after filing submissions on the main application, so he did not say anything on this point of jurisdiction. Even without such answer from the respondent's counsel, this point would best be answered by the applicant's counsel who filed this application.

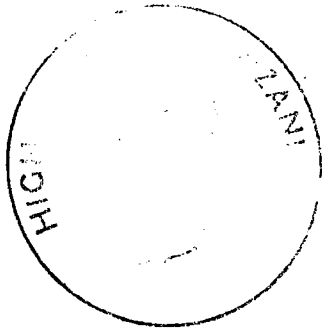
The main issue is whether, the High court can deal with application for certification on a point of law to the Court of Appeal where the judgment sought to be challenged was determined by the court with Extended Jurisdiction?


The position of the law is that powers to extend time to appeal or even certification on a point of law to the Court of Appeal where the matter originated from the Court exercising powers of Extended jurisdiction must be dealt with by the same court not the High court because after transferring the record nothing remains at the High court and appeal lies directly to the Court of Appeal. That position was clearly stated in the case of **Lukelo Uhaula vs The Republic**, Criminal Appeal No. 333 of 2016, CAT at Mbeya (unreported) citing with approval the case of **Oscar Pendeza vs The Republic**, Criminal Appeal No. 363 of 2015, CAT (unreported). The court observed that:-

"In the circumstances, the order by the High court granting extension of time is invalid because it has no powers to grant extension of time in an appeal which had been entertained by a subordinate court in the exercise of its extended jurisdiction."

The Court of Appeal proceeded to nullify an order for extension of time to lodge an appeal out of time simply because the appeal was heard by the Court exercising extended jurisdiction. The same logic I am convinced would extend in an application like this one for an order for certification on a point of law for the matter which was determined in the court with extended jurisdiction.

For the above stated reasons, the application is not properly before me. This application is hereby marked struck out with costs.




M. G. MZUNA,
JUDGE.
27. 11. 2020