

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

**MISC LAND APPLICATION NO 32 OF 2019  
(Arising from Land Appeal No.21 of 2019.)**

**AUS SELEMANI .....APPLICANT**

**VERSUS**

**DALALI JILALA.....RESPONDENT**

**RULING**

*Date of the last Order: -11/3/2020*

*Date of the Ruling: -27/3/2020*

**E.Y.MKWIZU, J.**

The applicant named above has filed an application before this court under the provisions of **section 47(2) of the Courts (Land Disputes Settlements) Act Cap 216 R.E 2002** and **section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 R. E 2002** applying for the following orders

*"1. That, the court be pleased to grant leave to appeal to the court of appeal on the points of law.*

*2. Cost of this application*

*3. Any other orders and relief this honourable Court may deem fit and equitable so to grant."*

The application is supported by applicant's affidavit sworn on 30th August 2019.

When the application came for hearing on 11/3/2020 both parties appeared in person, unrepresented. Supporting his application, the applicant submitted that, he raised four points of law in his affidavit in support of his application. He prayed to this court to certify the same to be points of law and allow him to appeal to the Court of Appeal. On his part, respondent said nothing substantial in his submission. However, going by paragraph 5 of his counter affidavit, respondents opposed the application to the effect that the point raised by the applicant in his affidavit (paragraph 5) are all points of facts and were neither advanced in the 1<sup>st</sup> appellate court nor the 2<sup>nd</sup> appellate court. He finally averred that the application is devoid of merit.

A close examination of the chamber summons reveals that, in addition to the enabling provision of section 47 (2) of the Courts (Land disputes) Act, applicant cited section 5(1) (c) of the AJA which is not an appropriate law

in our case. However, since the applicant has along with the wrong citation cited a proper law applicable in his presented prayer, I find that the application to be properly before me. For the interest of Justice and guided by the provisions for the overriding principle provisions, I hereby proceed with the merit of the application in disregards of the cited section 5 (1) ( c) of Appellate Jurisdiction Act, Section 47(2) of the Courts (Land Disputes Settlements) Act provides:

*"47(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".*

From the above cited provision, the right of appeal in land disputes originating from Ward Tribunals to the Court of Appeal is conditional upon grant of a Certificate of the High Court obtainable under section 47 (2) of Land Disputes Courts Act.

It is on the records that the dispute between the parties was initially filed before Malampaka Ward in Maswa District in Land application No 5 of 2015 then the appeal was preferred before Maswa District Land and Housing Tribunal in Land Appeal No 41 of 2015 and thereafter to the High Court Land Appeal No 21 of 2019.

In his affidavit in support of the chamber summons, the applicant had itemized four points of which he is praying to be certified as point of law to be determined by the Court of appeal. These are:

- 1) Whether, this court erred in law to declare the respondent the legal owner of the dispute land while in the tribunal he was not given the right to cross examine the respondent*
- 2) Whether it was proper for the trial chairman of the tribunal to rely on the evidence which was recorded without oath or affirmation*
- 3) Whether it was proper for the trial chairman of the tribunal to conduct proceedings without giving the chance for assessors to ask question for clarifications*
- 4) Whether it was proper for the trial chairman to rely on the opinion of the assessors without any written document showing the same.*

To decide whether the points above qualify as points of law warranting this courts certification for the Court of appeal's determination, I find it appropriate to revisit the records of the case at the trial. Having considered what transpired before the trial tribunal and the party's submission, I am of the strong view that points articulated in paragraph 5 of the affidavit in support of the application are points of law. This court, therefore, certifies the same as a point of law deserving to be considered by the Court of Appeal accordingly.

It is so ordered.

**DATED** at **SHINYANGA** this **27<sup>th</sup>** day of **MARCH, 2020**.

