

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF KIGOMA**

**(LAND DIVISION)**

**AT KIGOMA**

**APPELLATE JURISDICTION**

**(HC) MISC. LAND APPLICATION NO. 60 OF 2020**

(Arising from the Land Appeal No. 7 of 2020 Before: I.C. Mugeta – Judge).

**MELINA LEMERO.....APPLICANT**

**VERSUS**

**DUNIA TEGEJE.....RESPONDENT**

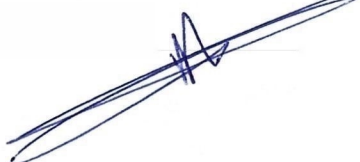
**RULING**

27th Nov.2020 & 09th Feb.2021

**A. MATUMA, J**

The Applicant is before me seeking for certification that there is a point of law involved in the decision of this Court Misc. Land Appeal No. 7/2020 between the parties herein delivered on 26/10/2020 by Honourable Mugeta Judge so that she can appeal to the Court of Appeal of Tanzania.

Mr. Bakari Chubwa learned advocate represented the Applicant and argued three grounds upon which leave is sought.



The respondent appeared in person and submitted that since he is not a lawyer, he had nothing to say or argue on legal issues. He thus left the matter for the Court to determine.

In the first ground, Mr. Bakari Chubwa learned advocate argued that the trial tribunal and the first appellate tribunal applied the doctrine of adverse possession against his client, the Applicant. That the doctrine was wrongly applied but on appeal to this Court, it was determined that such doctrine was not applied by the lower Courts.

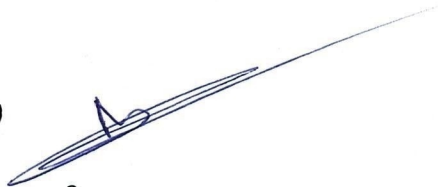
He thus called me to certify that there is a point of law for the Court of Appeal to determine whether the trial tribunal and 1<sup>st</sup> appellate tribunal did not apply the doctrine of adverse possession.

I have visited the judgment of the two lower tribunals and find that the issue of adverse possession came as discoveries in the Ward tribunal after its visit to the locus in quo;

*"Baraza liliondoka kwenda eneo la mgogoro ambapo mlalamikaji ndiye alianza kuonyesha. Na katika eneo hilo kulikuwa na nyumba za makazi ambazo tayari kulikuwa na watu wanaishi ambao ni familia ya mlalamikaji..."*

*Katika upande wa masthaka Baraza limegundua yafuatayo:-*

*a) Not applicable (N/A)*



b) N/A

c) *Mlalamikaji ameishi katika kiwanja hicho Zaidi ya miaka 28 bila kupata mgogoro wowote kuhusu kiwanja hicho.*

d) N/A

e) N/A

f) N/A

*Upandewa utetezi Baraza limegundua yafuatayo;-*

a) N/A

b) N/A

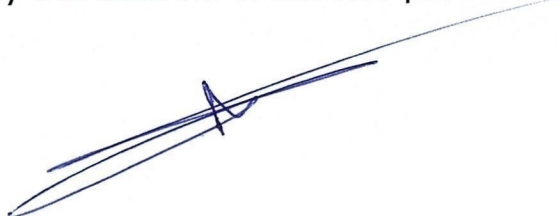
c) N/A

d) N/A"

When the matter went on appeal, the District Land and Housing Tribunal among others upheld the decision of the lower tribunal on the ground that the respondent had been peacefully enjoying the land for 28 years.

The applicant on appeal to this Court tabled one of the grounds of appeal that it was wrong for the two lower Courts to grant the suit property to the respondent merely on the reason that he has stayed on it for 28 years without disturbance.

In addressing that ground his lordship Mugeta, J held that the lower tribunals did not apply the doctrine of adverse possession in reaching to



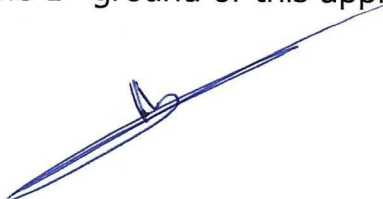
their respective decisions but rather on the strength of evidence that the suit property was allocated to the respondent by the village authority and that issues of **long possession** cropped up in the lower tribunals' decisions as **rhetoric question** because the respondent had enjoyed the land for 28 years without interference.

In my view there is no point of law here to certify because the decision of this Court which is intended to be challenged did not base its decision on the doctrine.

This Court adjudged for the Respondent on the strength of evidence that the dispute land was allocated to the respondent by the village authority;

*"...according to the evidence he was allocated the land by the village authority upon application... I find no reason to disturb that allocation".*

In the circumstances, it is uncalled for, to allow the applicant go to the Court of appeal on the matter which was not decided against him by this Court even if it would have been proved and or established that the lower Courts used the doctrine against him. This is more so because in the Court of appeal the decision to be challenged is of this Court and not that of the lower Courts. I thus reject the 1<sup>st</sup> ground of this application.





On the 2<sup>nd</sup> ground upon which certification on point of law is sought, the applicant contends that the coram of the trial tribunal was not proper for none reflection of the members.

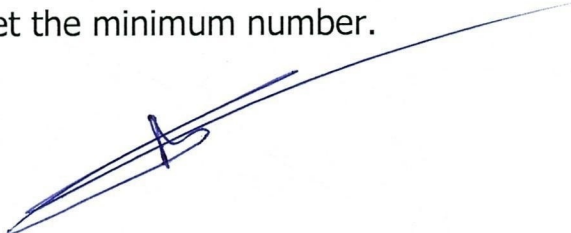
The leaned advocate for the applicant argued that section 4 (3) of the Ward tribunal Act, Cap 206 R.E 2002 was violated.

Section 4 (3) of the Act (supra) provides that the Quorum at a sitting of a tribunal shall be one half of the total number of members.

I find this as a technical ground merely because the proceedings of the trial tribunal did not reflect the names of members in each sitting but such names are clearly reflected at the end of the proceedings and judgment.

On this, this Court held that considering the provisions of section 15 (2) of Cap. 206 (supra), each tribunal ought to regulate its own proceedings, and that there is no rule requires a list of members present at each sitting.

In my view, the applicant is trying to employ technical grounds which currently is none of the business of the Court. I call it a technical ground because there is no specific claim neither on appeal to this Court nor on this application that the quorum on each sitting or a certain sitting of the trial tribunal did not meet the minimum number.

A handwritten signature in blue ink, consisting of a stylized, elongated shape with a small crossbar, possibly representing the initials of the judge.

The applicant was present in the trial, and ought to raise a specific claim against the quorum so that the respondent get opportunity to counter or reply thereof.

Whether or not the names of members should be reflected in the proceedings of the Ward Tribunal is not clearly stated under the law. I have even not found that Ward Tribunals are obliged to take formal proceedings as it is used to be in other Courts. In the circumstances, I reject this ground as well.

The third ground should also fail because it depended much on the second ground. The learned advocate was of the view that since the names of members were not reflected, it was difficult to ascertain the gender balance.

I find no merit on this ground because there was no specific claim that the gender balance was violated by the trial tribunal.

In the final analysis, this application is devoid of any merit and it is accordingly dismissed with costs.

It is so ordered.



  
**A. MATUMA**

**JUDGE**

**09/02/2020**

**Court:** Ruling delivered in chambers this 9<sup>th</sup> February, 2021 in the presence of the Advocated Thomas Msasa for the Applicant and in the absence of the Respondent.

**Sgd: A. MATUMA**

**JUDGE**

**09/2/2020**