

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**APPELLATE JURISDICTION**

**MISC. CIVIL APPLICATION NO. 14 OF 2021**

*(Arising from Land Appeal No. 21/2020 in the High Court of Tanzania at Kigoma Before: Hon. Mr. Justice I. C. Mugeta J. Emanating from the Judgment of the District Land and Housing Tribunal for Kigoma in Land Appeal no. 62/2018 by Chinuku-Chairperson and Originating from Land Dispute No. 47/2017 at Buhigwe Ward Tribunal)*

**MALIETHA GABO.....APPLICANT**

**VERSUS**

**ADAMU MTENGU .....RESPONDENT**

**RULING**

*19<sup>th</sup> & 19<sup>th</sup> April, 2021*

**A. MATUMA, J**

My learned brother Justice Mugeta on the 24<sup>th</sup> February, 2021 dismissed the Applicant's appeal in which she was challenging the decision of the District Land and Housing Tribunal in the exercise of its appellate jurisdiction in which the decision of the Ward Tribunal against her was sustained in favour of the respondent.

It is from such findings of this Court; the Applicant is aggrieved. She wants to knock the doors of the Court of Appeal of Tanzania, the notice of which has already been filed.

She is now seeking before me leave to appeal to the Court of Appeal of Tanzania under the provisions of section 47 (2) of the Land Disputes

Courts Act, Chapter 216 R.E 2019, Rule 45 (a) of the Tanzania Court of Appeal Rules, 2009 and section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 R.E 2019.

When this application came today for hearing, I required the parties to address me first of the legal point;

*'Whether in the circumstances of this matter it isn't a certificate on point of law which ought to have been sought instead of leave to appeal'.*

Mr. Joseph Mathias learned advocate who represented the Applicant at the hearing of this application readily conceded that this application suffers incompetence as they ought to have applied for certification on point of law instead of leave to appeal. He thus prayed to withdraw the application with leave to refile and the withdraw be without costs.

The respondent on his party had nothing to contribute on the matter, obviously because he is a layman.

There is no doubt that in law leave is sought when the intended appeal to the Court of Appeal is the second appeal. In other words; when the intended appeal is to challenge the decision of the High Court in the exercise of its first appellate jurisdiction and the Court of appeal is intended to be moved to exercise its second appellate jurisdiction.

But when the intended appeal to the Court of Appeal is a third appeal, then the intended Appellant must seek and obtain a certificate of this Court that a point of law is involved in the decision of this Court or order wealthy to be considered by the Court of appeal. This is the requirement



of section 47 (3) of the Land Disputes Courts Act, Cap. 216 R.E 2019 which provides;

*'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 certifying that there is a point of law involved in the appeal'.*

Therefore, any appeal to the Court of Appeal therefrom shall be a third appeal upon which a certificate on point of law must be first sought and obtained by the intended appellant.

In the instant matter, the Applicant is intending to challenge the decision of this Court which was entered by my learned brethren in the exercise of his second appellate jurisdiction on a matter which originated from Buhigwe Ward Tribunal in Land Dispute no. 47 of 2017.

The applicant should have therefore applied for certification on point of law and not leave to appeal.

In the circumstances, I agree with the leaned advocate that this application is improperly before me as the same is misconceived.

The learned advocate had prayed to withdraw the same with leave to refile

Withdraw could only be granted if the applicant would have noted the defect herself. Withdraw is not grated when the preliminary objection is lodged or when the Court has raised an issue ***suo motto*** against the application. This is to avoid the possibilities of a party to pre-empty the objection or the raised issue. See ***Harish Ambaramjina (By his***



***attorney Ajar Patel) versus Abdulrazak Jussa Suleiman (2004)  
TLR 343.***

In the circumstances, the application is hereby struck out for having been misconceived and wrongly brought before this Court.

About automatic extension of time for the applicant to refile her application (leave to refile), I find that it is better for the applicant to resort into a formal application so that she can state and establish the grounds of the delay for this Court to determine them. I therefore refrain from extending any time to the applicant at this juncture because the matter has been struck out and not withdrawn.

As this application has ended on the legal issue raised by the Court *suo motto*, I order no costs to either party.

Whoever aggrieved with this ruling has the right of appeal to the Court of Appeal of Tanzania. It is so ordered.



**A. Matuma**

**Judge**

**19/04/2021**

**Court:** Ruling delivered in chambers in the presence of the applicant in person and represented by Mr. Joseph Mathias learned Advocate and in the presence of the Respondent.

**Sgd: A. Matuma**

**Judge**

**19/04/2021**