

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT ARUSHA

MISC. LAND APPLICATION NO. 30 OF 2020

(C/f the decision of the High Court, in Misc. Land Appeal No. 58 of 2018, emanating from the District Land and Housing Tribunal for Karatu, Land Appeal No. 8 of 2016, Originating from Qurus Ward Tribunal, Application No. 9 of 2015)

DAUD BURA APPLICANT

Versus

YUSTINA SAFARI RESPONDENT

RULING

21st April & 28th May, 2021

Masara, J.

In Qurus Ward Tribunal (the trial Tribunal), the Respondent sued the Applicant claiming for a piece of land measuring 360m² located at Qurus Village within Karatu District (the suit land). On 31/5/2016, the trial Tribunal delivered its judgment in favour of the Respondent, declaring her the lawful owner of the suit land. That decision did not please the Applicant; he preferred an appeal to the District Land and Housing Tribunal for Karatu (the Appellate Tribunal) vide Land Appeal No. 8 of 2016. In its judgment delivered on 10/4/2017, the first Appellate Tribunal dismissed the appeal upholding the decision of the trial Tribunal. Still aggrieved, the Respondent preferred a second appeal in this Court, vide Misc. Land Appeal No. 58 of 2018. On 12/5/2020, this Court (Gwae, J.) dismissed the appeal, upholding the decision of the two lower Tribunals. Still discontented, the Appellant filed Notice of Appeal on 22/5/2020 intending to appeal to the Court of Appeal. Considering the fact that this Appeal emanates from Ward Tribunal, he has preferred this application

moving the Court to certify that there are points of law worth to be determined by the Court of Appeal.

The application is preferred under section 47(3) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. It is supported by an affidavit deposed by the Applicant himself. The Respondent contested the application through a counter affidavit deposed by herself. At the hearing of this application, both parties appeared in Court in person, unrepresented. The application was heard *viva voce*.

Both parties adopted their respective affidavits and sought to rely on them. Submitting in support of the application, the Applicant urged the Court to allow his application as his intended appeal has two main legal points. He identified the two points as follows: The decision of trial Tribunal was given without hearing him, although he attended the Tribunal throughout. The second point is on whether the principle of adverse possession applies in the case, since the suit was filed by the Respondent at the trial Tribunal.

Contesting the application, the Respondent contended that the Applicant is disturbing her, being a single mother, since he knows that she is financially feeble to fight for her rights. She maintained that the land belongs to her as it was allocated to her lawfully by the Village Government since 1992 to the time it was invaded by the Applicant in 2014.

I have given due consideration to the affidavits and annexes as well as the arguments of the parties for and against the application. The issue calling for this Court's determination is whether there are points of law worth of determination by the Court of Appeal.

It is trite law that a person intending to appeal to the Court of Appeal in cases originating from Ward Tribunals, like in this case, has to apply to this Court so that the Court certifies that there are points of law involved in the appeal. This is provided for under section 47(3) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The same was reiterated by the Court of Appeal in **Marco Kimiri and Another Vs. Naishoki Eliau Kimiri**, Civil Appeal No. 39 of 2012 (unreported), when it held:

"The requisite certificate on a point of law for an appeal originating from the Ward Tribunal is issued under section 47(2) of the Courts (Land Disputes Settlement) Act."

In the instant application, the Applicant pointed out two points of law that are to be considered in the intended appeal. He stated that the decision of the trial Tribunal was made without him being accorded the right to be heard and that the High Court relied on the doctrine of recent possession while it was the Respondent who instituted the case at the trial Tribunal. The Respondent said nothing about these two points, presumably due to her being a lay person. She only contested the application on the grounds that the same is yet another disturbance intending to obstruct her from enjoying lawful ownership of the suit land.

I have carefully gone through the trial Tribunal record. I could not trace anywhere the testimony of the Applicant who was the Respondent

thereat. The record is silent whether the Applicant adduced his evidence in the trial Tribunal. The right to be heard is fundamental. It is enshrined under Article 13(6)(a) of the Constitution of the United Republic of Tanzania. This position has been reiterated in a number of decisions, including *Mbeya-Rukwa Auto Parts & Transport Limited vs. Jestina George Mwakyoma* [2004] TLR 251 and *Shaibu Salim Hoza Vs. Helena Mhacha (Deceased)* Civil Appeal No. 7 of 2012 (unreported). Therefore, to determine whether the trial Tribunal failed to adhere to that fundamental right remains solely in the domain of the Court of Appeal during the hearing of the intended Appeal. I therefore agree with the Applicant that this is a legal point to be dealt with during the intended appeal.

Another point raised by the Applicant is that the High Court in its decision relied on the principle of adverse possession while it was the Respondent who sued the Applicant at the trial Tribunal. Adverse possession is also a legal issue in determining ownership of land. The same was referred in this Court's judgment.

It is the finding of this Court that the Applicant has raised legal points deserving determination by the Court of Appeal in the intended appeal. I henceforth certify the following two points as points of law to be determined by the Court of Appeal. First, **whether the Applicant was afforded the right to be heard at the trial Tribunal**, and second, **whether the invocation of the doctrine of adverse possession by the High Court in determination of the Appeal before it was justified.**

Consequently, the application is granted. The Applicant is at liberty to file the intended appeal to the Court of Appeal on the above certified points of law. Costs of this application shall abide to the outcome of the intended appeal.

It is so ordered.



Y. B. Masara

JUDGE

28th May, 2021

