

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

**(IN THE DISTRICT REGISTRY OF MWANZA)**

**AT MWANZA**

**MISC. LAND APPLICATION NO. 50 OF 2021**

*(Arising from the Judgment of the Court at Mwanza (Hon. Rumanyika, J) in Misc. Land Appeal No. 42 of 2020, dated 22<sup>nd</sup> April, 2020.)*

**BULENGANIJA NUBI ..... APPLICANT**

**VERSUS**

**LUCAS BUDEBA ..... RESPONDENT**

**RULING**

*13<sup>th</sup> & 28<sup>th</sup> July, 2021*

**ISMAIL, J.**

This application intends to move the Court to certify that a point of law, worth a consideration by the Court of Appeal of Tanzania, exists in the appeal that the applicant intends to file. The impending appeal is against the decision of the Court (Hon. Rumanyika, J.) that dismissed his appeal in Misc. Land Appeal No. 42 of 2020. In the applicant's thinking, the decision by the Court is faulty. The application has been preferred under the provisions of section 47 (3) of the Land Disputes Courts Act, Cap. 216 R.E. 2019. It is

supported by an affidavit of Mr. Erick Katemi, a counsel duly instructed to represent the applicant, and it sets out grounds on which the application is based.

Valiantly opposing the application is the respondent's counter-affidavit, sworn by Ms. Marina Mashimba, learned counsel for the respondent. She has denied that the impending appeal carries any point of law worth determination by the Court of Appeal. Defending the concurrent decisions of the lower forums, the respondent averred that no miscarriage or failure of justice has been occasioned to any party to the dispute, following the decision to dismiss the appeal.

Disposal of the application took the form of written submissions in conformity with the filing schedule. In his support submission, Mr. Katemi, learned advocate, contended that two points of law are distilled from the impugned decision. These are: Whether the Court erred in law by failing to hold that the respondent's claims at Igalula Ward Tribunal were time barred; and whether there was an improper and non-evaluation of evidence by the lower courts leading to a miscarriage and failure of justice.

With respect to the first issue, Mr. Katemi's contention is that, it took 36 years from the time the applicant began to occupy the suit land, to the time the respondent, the administrator of the estate of the late Budeba Dome, instituted the suit for recovery of the suit land. He considered this to be an inordinate delay that has rendered the matter time barred.

With regards to the second issue, the argument by the applicant is that, whilst the Court of Appeal cannot, as a matter general rule, interfere with concurrent findings of lower courts on matters of fact, circumstances obtaining in this case require that such intervention be considered. The reasons for that are three fold. One, that the District Land and Housing Tribunal for Geita failed to evaluate crucial evidence that would lead to a conclusion that the applicant is the owner of the suit land by virtue of his long occupation thereof. Secondly, that the Court held that Suki Kaliwa, an erstwhile holder of the suit land, was not called to testify, while the truth of the matter is that he was joined as a party to the trial proceedings at the Ward Tribunal and testified. Thirdly, that whereas the respondent testified that he was allocated the said land by the local authority, the available evidence reveals that the applicant acquired the said land from Suki Kuliwa. From this submission, the applicant's conclusion is that there are chances

that the impending appeal will succeed. He prayed that it be certified that a point of law exists.

For her part, Ms. Mashimba, learned counsel for the respondent, felt that the application exhibits no point of law worth a certification for determination by the Court of Appeal. This is because the points of contention are all factual matters. With respect to the first issue, the counsel's contention is that the Court was right to hold that there was no clear evidence of purchase of the suit land by Suki Kaliwa from Budeba Dome, or that the said land was entrusted to Suki Kaliwa after the demise of Budeba Dome. Ms. Mashimba argued that determination of this issue will definitely involve going through facts of the case.

Regarding the second issue, the contention by Ms. Mashimba is that, this too, will require evaluating the available evidence. She took the view that the concurrent findings of the lower courts on these factual issues were finally dealt with by the two appellate courts. She found nothing improper and that the alleged non-evaluation of the evidence is imaginary. She argued that these two points are not worth of consideration, consistent with the decision of the Court in ***Amour Azizi Salum v. Halima Waziri***, HC-Misc.

Civil application No. 123 of 2019 (MZA-unreported). She prayed that the application be dismissed with costs.

These brief submissions point to the question as to whether the instant application meets the threshold requisite for certification of a point of law that warrants the attention of the Court of Appeal.

It is a settled position that appeals to the Court of Appeal, in respect of matters originating from the Ward Tribunal, must undergo a sifting process that involves ascertaining if the intended appeal by the losing party carries a point of law of sufficient importance, worth of and relevant for consideration by the Court of Appeal. With respect to land matters, this requirement is provided for by section 47 (3) of the Land Disputes Courts Act, Cap. 216 R.E. 2019 which states as follows:

*"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 point of law involved in the appeal."*

The imperative requirement set out by the quoted excerpt has been emphasized in numerous decisions in this Court and the Court of Appeal. These include ***Omari Yusufu v. Mwajuma Yusufu & Another*** [1983] TLR

29; ***Dickson Rubingwa v. Paulo Lazaro***, CAT-Civil Application No. 1 Of 2008; ***Harban Haji Mosi & Another v. Omari Hila Seif***, CAT-Civil Reference No. 19 of 1997; and ***Marco Kimiri & Another v. Naishoki Eliau Kimiri***, CAT-Civil Appeal No. 39 of 2012 (all unreported).

In ***Abdallah Matata v. Raphael Mwaja***, CAT-Criminal Appeal No. 191 of 2013 (DDM-unreported), the Court of Appeal encapsulated the imperative requirement of certifying the point of law, in the following words:

*"In order to lodge a competent appeal to the Court, the intended appellant has to go through the High Court first with an application for a certificate that there is a point of law involved in the intended appeal. It is only when the appellant is armed with the certificate from the High Court, that a competent appeal may be instituted in this Court."*

In both of the proposed points of contention, the concern by the applicant is the perceived failure by the Court and tribunals, to make sense of the testimony adduced by the applicant and his witnesses, and hold that the suit land belongs to the applicant. While time bar is a point of law, the position here is that the applicant's adverse possession was challenged too late, after 36 years of alleged occupation of the suit land by the land. As to whether the said land belongs to the applicant is an evidential issue which

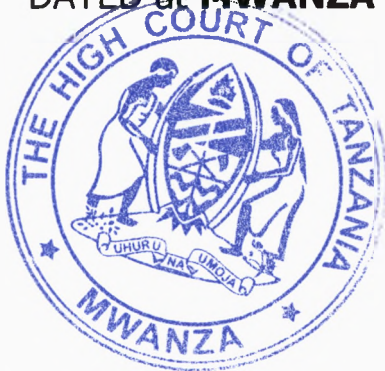
has been dealt with quite sufficiently by this Court and tribunals below. It is not something which cannot be re-opened by way of an appeal to the Court of Appeal.

The same can be said with respect to non-evaluation of evidence. It is completely a factual question which carries not a simplest semblance of a point of law that can be considered for certification by this Court.

Consequent to the foregoing, I take the view that this applicant has failed the test and the same is dismissed with costs.

It is so ordered.

DATED at **MWANZA** this 28<sup>th</sup> day of July, 2021.



  
**M.K. ISMAIL**

**JUDGE**

**Date:** 28/07/2021

**Coram:** Hon. C. Tengwa, DR

**Appellant:** Mr. Katemi Erick, Advocate

**Respondent:** Ms. Marina Mashimba, Advocate

**B/C:** J. Mhina

**Court:**

Ruling delivered today in the presence of both parties.

***C. M. Tengwa***

***DR***

**At Mwanza**

***28.07.2021***

