

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**[IN THE DISTRICT REGISTRY OF ARUSHA]**  
**AT ARUSHA**

**MISC. LAND APPLICATION NO. 99 OF 2019**

*(C/F the High Court of Tanzania in Misc. Land Application No. 140 of 2018)*

**ELIBARIKI JACKOB ..... APPLICANT**

***Versus***

**MEVUKORI SAILEVU ..... 1<sup>ST</sup> RESPONDENT**

**NATANG'MWAKI MEVUKORI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

*15<sup>th</sup> May & 6<sup>th</sup> August, 2021*

**Masara, J.**

I am asked by the Applicant to exercise powers conferred to this Court under section 47(1) and (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2002], to grant him leave to appeal to the Court of Appeal and, at the same time, certify that there are points of law to be adjudged by the Court of Appeal in respect of the decision of this Court in Misc. Land Application No. 140 of 2018, which was delivered on 4/11/2019.

The application is supported by the affidavit of the Applicant. The Respondents contested the application in a counter affidavit deposed by Mr. Nelson Siokino Merinyo, the Respondents' advocate, who also represented them at the hearing of the application. The Applicant was represented by Mr. Severine John Lawena, learned advocate.

Brief facts leading to this application, as per the affidavits and annexes presented by the parties, are briefly as follows: On 3/12/2018, the Applicant filed Misc. Land Application No. 140 of 2018 in this Court, seeking an extension of time to file appeal against the decision of the District Land and Housing Tribunal for Arusha, in Application No. 1 of 2013. Parties were directed to file written submissions whereby the Applicant was to file his submissions by

9/10/2019. Incidentally, he did not file the submissions as ordered by the Court. On 4/11/2019, the Applicant asked the Court to extend time to allow him to file his written submissions. Unfortunately, the prayer was rejected. In the final result, the Court (Mzuna, J.) dismissed the application. It is against that decision that the Applicant intends to challenge before the Court of Appeal.

Before indulging into the submissions of the advocates for the parties, it is desirable first to ascertain whether the application is competent before this Court.

In the chamber summons, the Applicant highlighted two points that he considers to be legal points worth determination by the Court of Appeal. Those are highlighted in paragraph 5(a) and (b) of his affidavit. The stated points centres on the fact that he was denied the right to be heard.

From the available record, I note that the decision sought to be challenged in the Court of Appeal is Misc. Land Application No. 140 of 2018, which was determined by this Court on 4/11/2019. The instant application is preferred under section 47(1) and (2) of the Land Disputes Courts Act. The relevant provision provides:

*"47- (1) Any person who is aggrieved by the decision of the High Court (Land Division) in the exercise of its original, revisional or appellate jurisdiction, may **with the leave from the High Court (Land Division) appeal to the Court of Appeal** in accordance with the Appellate Jurisdiction Act, 1979.  
(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.**"* (Emphasis added)

From the above position of the law, it is pertinent that the decision intended to be appealed against originates from the High Court in Misc. Land Application No. 140 of 2018. Therefore, as per subsection 1 above, the Applicant ought to



have sought leave alone, without necessarily seeking for certification on a point of law.

According to the record, the Applicant states that the impugned decision originated from Land Application No. 1 of 2013 determined by the District Land and Housing Tribunal for Arusha. However, the decision in Land Application No. 1 of 2013 was not made part of record in this application. Nevertheless, even if I was to assume the existence of that decision, this Application would not be sustained because appeals from decisions of this Court to the Court of Appeal on matters arising from District Land and Housing Tribunal do not require certification that there is a point of law involved in the impugned decision. Certification on points of law in such a decision is only sought where an appeal originates from a decision of a Ward Tribunal. I am guided by the decision of the Court of Appeal in ***Dorina N. Mkumwa Vs. Edwin David Hamis***, Civil Appeal No. 53 of 2017 (unreported), where it was held:

*"Certificates are designed to ensure that land disputes originating from Ward Tribunal come to an expeditious end, preferably in the High Court. On this stance, we abide with our earlier unreported decision in **TIMOTHY ALVIN KAHOMO V. SALUM ADAM MFIKIRWA**, CIVIL APPLICATION NO. 215 OF 2013 where we restated that a decision of the High Court refusing to grant a certificate on a point of law under section 47(2) of Land Disputes Courts Act, is final and no appeal against it lies to this Court."*

Therefore, the instant application, as far as certification on points of law is concerned, is misconceived. The prayer for certifying that there are points of law was improperly included in the application. The Applicant should only have applied for leave. Unfortunately, the Application has yet another anomaly making it difficult for me to determine whether or not to grant leave. The anomaly relates to non-inclusion of the decision of this Court in respect of Misc. Land Application No. 140 of 2018. I also note that the decision in Land Application No. 1 of 2013 of the District Tribunal was not made part of the record in this application. In the absence of the two decisions, even if I was

prepared to grant leave, there are no records to assist me to determine the grounds for granting leave. In the circumstances the application before me is incompetent. The Applicant has failed to move the Court properly to grant the prayers sought in this application. Since the application is incompetent, I am not in a position to proceed to determine the merits of the application.

Guided by above reasoning, the application is bound to fail. I hereby strike out the application with costs.

Order accordingly.



A handwritten signature in black ink, appearing to read "Y. B. Masara".

Y. B. Masara

**JUDGE**

6<sup>th</sup> August, 2021