

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN TABORA  
MISCELLANEOUS LAND APPLICATION NO. 23 OF 2020  
(Arising from Land Appeal No. 8 of 2019 of High Court of Tanzania at  
Tabora)**

**SAMWEL MKONWA -----APPLICANT  
VERSUS  
LUCY JOHN MALIKITA ----- RESPONDENT**

**RULING**

*Date 23/06/2021& 10/09/2021*

**BAHATI, J.:**

The Applicant herein named Samwel Mkonwa being aggrieved by the decision of this c

ourt in Land Appeal No. 8 of 2019 (Amour, J) dated 29/07/2020, lodged this application by way of chamber summons supported by an affidavit praying this court to grant a certificate on points of law to appeal to the Court of Appeal of Tanzania. The application has been preferred under the provisions of section 47(2) of the Courts Land Disputes Settlement Act, Cap. 216 [R.E 2019].

According to the affidavit deposed by the applicant on the 11<sup>th</sup> day of August 2020 in paragraph 5, the following are points required for certification:

- a) That, the decision of the High Court was made without due regard to the law of limitation on the dispute based on land*

*hence coursed(sic) miscarriage of justice, and therefore a need to get a decision of the court of appeal on this aspect of the dispute.*

*b) That, the decision of the High Court was reached without due regard to the established required standard of proof in civil/land disputes hence the interpretation of the court of appeal of the evidence in the record is required so that it can be marshaled to see whether the decision of the High Court was supported with evidence in the required law standard.*

At the hearing of this application, both parties appeared in person unrepresented. Since all parties are laypersons and the matters for discussion in this application are pure matters of law they prayed this court to adopt their respective affidavits to be their submissions.

A certification on point of law for appeal purposes is not automatic, this court will have to consider points to be certified as referred hereinabove.

From the chamber summons, the applicant has embedded section 47(2) of the Courts Land Disputes Settlement Act, Cap 216 [R.E 2019] to be the enabling provision but the proper section and law for this type of application is section 47 (3) of the Land Disputes Courts Act Cap 216 [R.E 2019] which provides that: -

*(3) Where an appeal to the Court of Appeal originates from the Ward Tribunal, the appellant shall be required*

*to seek the Certificate from the High Court certifying that there is a point of law involved in the appeal.*

Having examined the entire application, I will now deliberate on the merits of the application. The gist from the above-cited provision is that Appeals originating from the Ward Tribunal to the Court of Appeal must be accompanied by a certificate that there is a point of law involved worth consideration of the Court of Appeal.

In certifying the points of law to the Court of Appeal the court has to evaluate the proposed points of law and determine whether they are worth being certified.

I am aware of the decision of the Court of Appeal in ***Dorina N. Mkumwa vs Edwin David Hamis Civil Appeal No. 53 of 2017 CAT at Mwanza*** (unreported) 11 the court held that: -

*"Therefore, when High Court receives applications to certify a point of law, we expect Rulings showing the serious evaluation of the question whether what is proposed as a point of law, is worth to be certified to the Court of Appeal. This Court does not expect the certifying High Court to act as an uncritical conduit to allow whatsoever the intending appellant proposes as a point of law to be perfunctorily forwarded to the Court as the point of law"*

Guided by the above position set by the climax court, I will now get back to the points proposed by the applicant.

On the first point, the applicant alleges that the decision of the High Court was made without due regard to the law of limitation on dispute based on land. Having read the judgment and perused the entire record of the case nowhere the issue of limitation was ever discussed by three courts.

besides, the law of limitation is so broad, the applicant has to elucidate as to what point the court ought to have regarded the law of limitation, the ground is silent and due to that silence, I accordingly reject this point of law so proposed.

On the second point, the applicant alleges that the decision of the High Court was reached without due regard to the established required standard of proof in civil/land disputes.

Having painstakingly gone through the judgment of this Court from page 3 to 4 the learned judge cited the case of ***R v. Hassan Bin Said [1942] 9 EACA. 62*** and made it clear that I quote:

*"On the second appeal, the Court of Appeal is precluded from questioning the findings of fact of the trial Court provided that there was evidence to support those findings, though it may think possible or even probable, that it would have itself come to the same conclusion. It can only interfere where it considers that there was no evidence to support the finding of fact, this being a question of law"*

The above-quoted paragraph makes it clear that the duty of the High Court being the second appellate court was not to re-evaluate the questions of fact, it is my considered view that this point relates to evidence or fact not a legal point to be certified.

Given the above analysis, I hold the present application to be unmeritorious, and thus it is dismissed.

No order as to costs.



**A.A. BAHATI**

**JUDGE**

**10/09/2021**



Date: 10/9/2021

Coram: Hon. N. Mwakatobe, DR

Applicant: Present

Respondent: Present

B/C Grace Mkemwa, RMA

Court: Ruling is delivered in presence of applicant and Respondent in person this 10<sup>th</sup> day September, 2021.



**N. MWAKATOBÉ**

**DEPTY REGISTRAR**

**10/9/2021**

Right to appeal is hereby explained.



**N. MWAKATOBÉ**

**DEPTY REGISTRAR**

**10/9/2021**

