

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB – REGISTRY

AT MUSOMA

MISC. CIVIL APPLICATION NO 64 OF 2020

(Arising from the Judgment of the High court of Tanzania at Musoma Registry in PC Civil Appeal No. 11 of 2020 and from Misc. Civil Appeal No. 91 of 2019 at Musoma District Court and Originated from Zanaki Primary Court, Civil Case No. 8 of 2017)

NYAMAROSO CHACHA APPLICANT

VERSUS

REGINA MAIBU RESPONDENT

RULING

11th October and 15th November, 2021

F.H. MAHIMBALI, J.:

In this application the applicant is seeking for an order of this Court certifying that there are points of law worth of determination by the Court of Appeal of Tanzania.

The background of the matter is this; the applicant was ordered by the trial court (Musoma Primary Court at Zanaki) to pay the respondent a total claim of TZS: 2,400,000/= . Aggrieved by this decision

unsuccessfully appealed to the District Court of Musoma and Musoma High court. The duo appellate courts upheld the decision of the trial court. Still dissatisfied, the applicant wishes to knock the doors of the Court of Appeal to protest the award of the trial court and the concurrent findings of the two appellate courts hierarchically.

This application is by law a mandatory legal requirement as stipulated under section 5(2)(c) of the Appellate Jurisdiction Act, Cap 141 R.E 2019; that for this matter originating from primary court, its appeal to Court of Appeal is only permissible upon certification by the High Court that there is a point of law worth determinable by the Court of Appeal.

In convincing this court that there are points of law worth determinable by the Court of Appeal following the verdict of this Court as per Kahyoza, J, in his supporting affidavit, the applicant has listed five legal points which he thinks deserve the attention of the Court of Appeal, namely: -

- i) Whether the Respondent to win the case by hearsay evidence is admissible.

- ii) Whether the Respondent had a legal status to claim the appellant instead of Chairman of group.
- iii) That the plaintiff's testimony before the Primary Court does not match with her document contrary to our laws.
- iv) Whether the plaintiff to win the case while the Plaintiff did not disclose cause of action is lawful.
- v) Whether the plaintiff to win the case without recording assessors' opinions on judgment before primary court is lawful.

During the hearing of the application, the parties appeared in persons, unrepresented.

In support of the application, the applicant prayed that his grounds of appeal contained into his affidavit be adopted by the Court and be certified as points law worth determinable by the Court of Appeal. As regards the proper citation of the enabling rule for filing notice of appeal as considered to be improper, he prayed that he corrects it for the interests of justice.

On the other hand, the Respondent prayed his counter affidavit dully filed in this court to be adopted by the Court as the respondent's part of his submission. He however added that as the cited enabling rule

of the notice of appeal (Section 3(1) of the Court of Appeal Rules) is not proper, then this application is equally defective. He prayed that this application be dismissed.

I have thoroughly considered the affidavit and submission by the applicant herein. It is indeed a requirement of the law that no appeal shall lie against a decision of the High Court originating from primary courts unless the High Court certifies that there are legal issues worth of consideration by the Court of Appeal.

In applications to certify that there are points of law to be considered by the Court of Appeal in the intended appeal, in the case of **AH Vuai AH Vs. Suwedi Mzee Suwedi** [2004] TLR 110, the Court of Appeal held:

"Certificate on a point of law is required in matters originating in Primary Courts; it is provided therein that an appeal against the decision or order of the High Court in matters originating in Primary Courts would not be unless the High Court certifies that a point of law is involved in the decision or order."

In the case of **DORINA N. MKUMWA VERSUS EDWIN DAVID HAMIS**, Civil Appeal no. 57 of 2017, the Court of Appeal regarding application on certificate on point of law, emphasised that: -

“It is therefore self-evident that applications for Certificates of the High Court on points of law are serious applications. Therefore, when High Court receives applications to certify point of law, we expect Rulings showing 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 point of law to be perfunctorily forwarded to the Court as point of law....”.

The point of consideration by this court is whether this application is worth of consideration for its grant. I have gone through the brief affidavit of the applicant; I have not been able to see what exactly are the said points of law worth determinable by the Court of Appeal that this court should certify for that consideration. I had expected that the applicant should have elaborated the said points of law as reflected into the trial court’s proceedings and of the subsequent appellate courts.

Certifying any of these proposed issues as a point of law for Court of Appeal’s determination, is to make the High Court a conduit pipe allowing whatsoever the intending appellant proposes as point of law to be perfunctorily forwarded to the Court of Appeal as point of law. After all, the applicant’s annexed notice of appeal to Court of Appeal is

defective for bearing a wrong enabling rule. Whereas the appropriate rule ought to be 83(1) of the Court of Appeal Rules, Cap 141, R.E 2019 the application bears notice of appeal drafted under section 3(1) of the Court of Appeal Rules, 2009.

From the foregoing, I therefore reject all these grounds with costs and certify nothing as pure legal points worth of determination by the Court of Appeal.

It is so ordered.

DATED at MUSOMA this 15th day of November, 2021.




F. H. Mahimbali

JUDGE

15/11/2021

Court: Ruling delivered this 15th day of November, 2021 in the presence of the both parties is present in person and Mr. Gidion Mugua – RMA.


F. H. Mahimbali

JUDGE

15/11/2021