

IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MBEYA)

AT MBEYA

MISC. CIVIL APPLICATION NO. 10 OF 2021

(From the decision of the High Court of Tanzania at Mbeya in PC Civil Appeal No. 17 of 2019, from the District Court of Momba at Chapwa in Civil Appeal No. 13 of 2018. Originating from Tunduma Urban Primary Court in Civil Case No. 150 of 2018.)

HASSAN KIBONA.....1ST APPLICANT

MHIBU LANGUKA.....2ND APPLICANT

VERSUS

AMANYISYE KAMWELA.....RESPONDENT

RULING

*Date of Last Order: 23/09/2021
Date of Ruling : 03/11/2021*

MONGELLA, J.

The applicants have filed the application at hand under section 5 (2) (c) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019. They are seeking for this Court to certify that there is a point of law to be determined by the



Court of Appeal against a decision of this Court rendered in Civil Appeal No. 17 of 2019. It is supported by an affidavit sworn by both applicants.

Both parties were represented by learned advocates. The applicants were represented by Mr. Alfredy Chapa, while the respondent was represented by Ms. Neema Saruni. The application was argued by written submissions.

In his submission in chief, Mr. Chapa first adopted the contents of the applicants' supporting affidavit to form part of his submission. He then referred to paragraph 4 (i), (ii), (iii), and (iv) of the supporting affidavit saying that the points to be determined by the Court of Appeal are contained therein.

Before discussing the points of law, Mr. Chapa gave brief facts of the matter. He submitted that the dispute between the parties centres on the legal ownership of the motor vehicle, which is the subject matter of the dispute. He said that there was no proof on how the registration of the motor vehicle in question was changed from the 1st applicant's name and there was no proof that the motor vehicle was sold to the respondent who had already passed away.

He faulted the decision of this Court arguing that it ruled that the motor vehicle is the property of the respondent without considering the issue in dispute which concerned the ownership. He added that there was a letter from TRA showing that the ownership to the said motor vehicle had changed, but no document was presented to that effect. In the premises

he contended that this Court erred in invoking the provisions of section 15 of the Road Traffic Act on presumption, since there was already a dispute on how the registration card to the motor vehicle was obtained.

In consideration of the above submission, Mr. Chapa listed three points of law to be determined by the Court of Appeal as being:

1. *Whether the appellate judge properly construed the provisions of section 15 of the Road Traffic Act No. 30 of 1973 while there was already a dispute regarding ownership of the said motor vehicle.*
2. *Whether the appellate judge was right in ordering the motor vehicle be the property of the respondent while the respondent did not tender the certificate of registration of the motor vehicle as exhibit.*
3. *Whether there was a contract between the parties to effect transfer of the motor vehicle in question.*

Mr. Chapa urged the Court to be guided by the principles settled in the case of **Said Ramadhani Mnyanga vs. Abdallah Salehe** [1996] TLR 74; **Registered Trustees of Biafra Secondary School and Another vs. Enock Daniel Makenge**, Misc. Civil Application No. 575 of 2019 (HC at DSM). In both cases the Courts ruled that leave to appeal is granted where there are contentious issues to be considered by the Court of Appeal.



In reply, Ms. Saruni first adopted the contents of the respondent's counter affidavit. She then proceeded to oppose the application. Her opposition centred on one major ground being that; the applicants have not demonstrated any points of law to be determined by the Court of Appeal. She argued that what the appellants have submitted are matters of facts which were raised and dealt with accordingly by the 2nd appellate Court and the lower courts. She added that the claim by the appellants is centred on ownership of the motor vehicle in question something which requires proof.

She reiterated her stance that the issue of ownership was proved in the trial court whereby it was proved that the respondent was the rightful owner. The findings of the trial primary court were upheld by the two appellate courts by properly invoking the provisions of section 15 of the Road Traffic Act. She invited the Court to be guided by the principles settled in the case of **Harban Haji Mosi and Another vs. Omar Hilal Seif and Another** [2001] TLR 409; and that of **Magige Nyamoyo Kisinja vs. Merania Mapambo Machiwa**, Civil Appeal No. 87 of 2018 (CAT at Mwanza, unreported), in granting certificate on point of law.

In rejoinder, Mr. Chapa mostly reiterated the arguments advanced in his submission in chief. He insisted that the 2nd appellate Court ruled that the motor vehicle in question be the property of the respondent without considering that the issue in dispute regarded ownership as there was a letter from TRA that the said motor vehicle was changed, but the documents to effect the changes were not yet found and the respondent did not provide those documents. In the premises the 2nd appellate Court

erred in invoking the provisions of section 15 of the Road Traffic Act on presumption.

After considering the arguments by the learned counsels, I am left with the duty to determine whether the points advanced by the appellants constitutes points of law worthy of this Court to issue a certificate on point of law for determination by the Court of Appeal. However, before I embark on that journey of deliberation, I wish to point out that it appears the counsel for the applicants has misconceived what entails certificate on point of law and leave to appeal by thinking that they are used interchangeably. This is because while concluding his submission, he urged the Court to grant leave to appeal and referred the Court to cases which settled principles in granting leave to appeal to the Court of Appeal.

Certificate on point of law and leave to appeal are definitely two different things, granted in different scenarios and require different conditions. While leave to appeal to the Court of Appeal is sought and granted in matters emanating from the district courts or resident magistrates' court, or from the district land and housing tribunals in land matters; certificate on point of law is sought and granted on matters emanating from primary courts or ward tribunals in land matters. See: **Marcco Kimiri and Naftali Logilaki vs. Naishoki Eliau Kimiri**, Civil Appeal No. 39 of 2012 (CAT at Arusha, unreported).

In leave to appeal, the applicant is only required to demonstrate that there are serious triable issues to be determined by the Court of Appeal.

The triable issues could be of law and or facts. See: **Harban Haji Mosi & Another v. Omari Hilal Seif & Another** [2001] TLR 409; and **Faustina Kanyasa v. Neva Kanyasa and Richard Kanyasa**, Misc. Land Application No. 108 of 2016 (HC at Mbeya, unreported).

In certificate on point of law, the applicant has to point out a point that is of legal nature to be determined by the Court of Appeal. In the case of **Magige Nyamoyo Kisinja** (supra) cited by Ms. Saruni, the Court of Appeal while revisiting its previous decision in the case of **Mohamed Mohamed and Another vs. Omari Khatib**, Civil Appeal No. 68 of 2011 (unreported) explained what constitutes a point of law. It stated:

"... for instance, where there is a novel point, where the issue raised is unprecedented, where the point sought to be certified has not been pronounced by the Court before and is significant and goes to the root of the decision, where the issue at stake involves jurisdiction, where the court(s) below misinterpreted the law etc..."

At page 7 of the decision, the Court further stated:

"We must emphasize that the point to be certified by the High Court must be that of legal nature and significant to warrant the decision of the Court. It is not enough for a party in a third appeal, like in the instant appeal, to simply think the lower court is wrong in its decision to have his case heard by the Court of Appeal. Matters of law which the Court is called upon to determine must transcend the interest of the immediate parties in the appeal. Indeed, in some cases matters of law placed before the Court for determination are of public importance especially when an interpretation of the law is involved."

In the case of **Dorina N. Mkumwa vs. Edwin David Hamis**, Civil Appeal No. 53 of 2017, (CAT at Mwanza, unreported), the Court of Appeal ruled that upon receiving applications to certify point of law, the High Court is required to seriously evaluate on whether what is proposed as point of law, is worth to be certified to the Court of Appeal. I therefore proceed to scrutinize the points proposed by the applicants.

In the matter at hand the applicants raised three points being: (1) *whether the appellate judge properly construed the provisions of section 15 of the Road Traffic Act No. 30 of 1973 while there was already a dispute regarding ownership of the said motor vehicle*; (2) *whether the appellate judge was right in ordering the motor vehicle be the property of the respondent while the respondent did not tender the certificate of registration of the motor vehicle as exhibit*; and (3) *whether there was a contract between the parties to effect transfer of the motor vehicle in question*.

Though Mr. Chapa, in his rejoinder, challenged Ms. Saruni's contention that the points are not of law but facts, I subscribe to Ms. Saruni's argument. On the 3rd point, the applicants basically contend that there was no evidence in form of contract proving that the motor vehicle in question was in fact transferred in the name of the deceased. On the 1st and 2nd grounds the applicants are challenging the decision of the 2nd appellate Court by invoking the provisions of section 15 of the Road Traffic Act thereby declaring the deceased, represented by the respondent as the administrator of his estate, as the lawful owner of the motor vehicle.

I took the trouble to read the 2nd appellate Court's judgment. My finding thereof is that in reaching its decision the Court considered the evidence tendered by the respondent, which was a letter from TRA showing that the deceased was the registered owner of the motor vehicle after the same being transferred from the 1st appellant. In consideration of this piece of evidence, the Court invoked the provisions of section 15 of the Road Traffic Act, which provides that "*the person in whose name the motor vehicle or transfer is registered shall unless the contrary be proved be presumed to be the owner of the motor vehicle.*" The Court also observed that there was no other evidence from the appellants to rebut the presumption. Specifically, as held at page 11, the Court stated:

My further view is that, the registration card/certificate of a motor vehicle constitutes, in law, good evidence that the registered owner appearing in the card/certificate is the lawful owner of the motor vehicle, unless evidence is adduced to the contrary; see section 15 of the Road Traffic Act, No. 30 of 1973. In the matter at hand, no such evidence was adduced to show that the deceased, whose name appears in the registration card/certificate as the second owner of the vehicle, was in fact, not the lawful owner. Indeed, even the report from the TRA itself did not suggest any other fact apart from those embodied into the registration card/certificate.

In consideration of the above finding of the Court and the arguments by the applicants, I can therefore, firmly say that the applicants' proposed points are centred at challenging the sufficiency of the evidence considered by the Court in reaching its decision. The law is trite to the effect that a point of law based on evidence can only be considered if

there was no any evidence at all. If the evidence is considered insufficient by the applicant, the proposed point in that aspect cannot be entertained by the Court of Appeal even if a different finding would have been reached by the Court if such evidence would be considered by the appellate Court. This position was settled by the Court of Appeal in the case of **Agness Severini vs. Mussa Mdoe** [1989] TLR 164 whereby it was observed that:

*"We wish to observe at the outset that this was an unsatisfactory way of certifying a point of law. That certificate is capable of two interpretations. It could mean posing the question whether there was any evidence at all to support the concurrent decisions of the courts below. It could equally mean to ask the question whether the evidence as adduced was sufficient to support and justify those decisions. How, this distinction is imported. The question whether there was any evidence at all to support the decision is a question of law which can properly be certified for the opinion of this Court. **But whether the evidence as adduced was sufficient to support the decision is a question of fact which could not properly be the subject of a certificate for the opinion of this Court. For, this Court takes the view that if there was some evidence on which the courts below could have arrived at the decision they did, then this Court will not interfere, even though had this Court itself tried the case it might have come to a different decision.** Those who are called upon to certify points of law should, therefore keep this distinction in mind in order to ensure that only the correct questions are certified for the opinion of this Court."*

On the strength of the above decision, I find the proposed points of law by the applicants' not worthy of being certified for determination by the

Court of Appeal. This is simply because they are aimed at challenging the sufficiency of evidence adduced in the lower courts and evaluated and decided upon by the 2nd appellate Court. In addition, the applicants are also geared at challenging the interpretation of the Court on the provisions of section 15 of the Road Traffic Act, which was done in relation to the evidence on record. Consequently, the application is found to be devoid of merit, therefore dismissed with costs.

Dated at Mbeya on this 03rd day of November 2021




L.M. MONGELLA
JUDGE

Date: 03/11/2021

Coram: P.D. Ntumo, PRM - Ag. DR

1st Applicant: Present

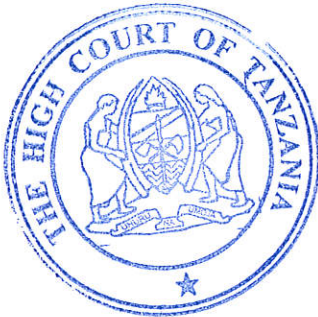
2nd Applicant: Absent

For the Applicants: Mr. Peter Kilanga, Advocate holding brief for
Mr. Alfred Chapa, Advocate.

Respondent: Present

B/C: Mapunda

Court: Ruling delivered in chambers in the presence of the 1st applicant, Mr. Peter Kilanga holding brief for Mr. Alfred Chapa, Advocate and the respondent this 3rd day of November 2021.



A handwritten signature in blue ink, appearing to read "P.D. Ntumo".

P.D. Ntumo

Ag. Deputy Registrar

03/11/2021