

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI**

MISC LAND APPLICATION NO. 21 OF 2021

(C/f Misc. Land Appeal No.1 of 2021 High Court Moshi Registry, emanated from Land Appeal No. 52 of 2018 of Moshi District Land and Housing Tribunal, Originating from Land Application No. 7 of 2018 Kirua Vunjo Kusini Ward Tribunal)

**GODLISTEN MASHINGIA (As a Legal representative
of estate of Edna Jackson Mashingia) APPLICANT**

VERSUS

MARIAM JACKSON..... 1ST RESPONDENT

DAVID JACKSON 2ND RESPONDENT

PIKO JACKSON.....3RD RESPONDENT

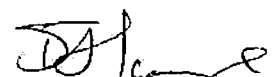
RULING

18/11/2021 & 17/12/2021

SIMFUKWE, J

The applicants herein, pursuant to **section 47(2) and (3) of Land Disputes Courts Act, Cap 216 R.E 2019** and **section 5(c) of Appellate Jurisdiction Act, Cap 141 R.E 2019** and **Rule 45(a) of Tanzania Court of Appeal Rules,2009 R.E 2019** and any other enabling provisions of law, has moved this court seeking for the following orders;

- 1. That, the applicant be given leave to appeal to the Court of Appeal of Tanzania against the Judgment and decree of **Hon. B. R. Mutungi, J** in Misc. Land appeal No.1 of 2021 filed in*



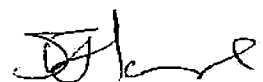
the High Court of Tanzania at Moshi and delivered on 28th day of May, 2021.

- 2. That the court certifies that there is point of law involved to appeal to the Court of Appeal of Tanzania against Misc. Land Appeal No.1 of 2021.*
- 3. Costs borne by the Respondents. (sic)*

The application was supported by an affidavit deposed by Tumaini Materu, learned counsel which was contested by the Respondents' joint counter affidavit. The matter was ordered to be argued by way of written submissions since the respondents were unrepresented.

The gist of the application is to the effect that, the Applicant unsuccessfully filed a land dispute vide Shauri No.7 of 2016 at Kirua Vunjo Kusini Ward Tribunal. The applicant herein appealed against the decision of the Ward Tribunal, vide Land Appeal No. 52 of 2018, which was decided in favour of the respondents. Being dissatisfied, he appealed to this Court vide Misc. Land Appeal No. 1 of 2021, again luck was not in his side. He now wants to approach the Court of Appeal, so he applied for leave and certificate that there is point of law.

The learned advocate for the applicant narrated briefly the facts of the dispute which I find no need of reproducing. As far as the application is concerned, Mr., Materu submitted to the effect that it is trite law that for leave to appeal to the Court of Appeal to be granted, the Court must ascertain if there is legal point worth for determination by the Court of Appeal. He made reference to the cases of **Nurbhai N. Raittansi vs Ministry of Water Construction Energy and Environment and Hussein Rajabali Hirji [2005] TLR 220** and **National Bank of**




Commerce vs Maisha Musa Uledi (Life Business Centre), Civil Application No.410/07 of 2019.

In addition, it was submitted that not only that there must be point of law but also leave may be granted where the Court feels that grounds to appeal raise issues of general importance or where the grounds show prima facie or arguable appeal. He cited the case of **Buckle v Holmes (1926) ALL ER 90** at page 91 and **British Broadcasting Corporation vs Eric Sikujua Ng'maryo, Civil Application No.138 of 2004** to buttress the position.

In that respect, the learned counsel contended that paragraph 7 of the affidavit sworn by the advocate of the Applicant contains point of law and raises legal points in the decision sought to be appealed against worth consideration by the Court of Appeal. The grounds are that:

- i. That, the learned Judge erred in law and fact for re-evaluating the evidence in giving judgment and decree in favour of the Respondents on the basis of Respondents having living in the suit land without regard the principle of licensee and without consider the disputed land was a farm used for agricultural activities and there was no residential house. (sic)*
- ii. That, the learned Judge erred in law and fact when neglecting to hold on the Will while the Respondents relied on such Will to establish their ownership of the suitland.*
- iii. That, the learned Judge while re-evaluating the evidence on record erred in law and fact when held on balance of probability the 1st Respondent has right ownership of the suit land; (sic)*



- iv. That, the learned Judge erred in not re-evaluating and held that the suit land being not listed in Probate Cause No.1 of 2014 suffice to give ownership to the Respondents.*
- v. That, the learned Judge erred in law and fact when failed to properly re-evaluating the evidence. (sic)*
- vi. That, the learned Judge erred in law and facts when decided in favour of the Respondents while the Respondents failed to prove on balance of probability at Ward Tribunal, if she would have clearly re-evaluating (sic) the evidence on records she would have decided in favour of the Applicant herein. (sic)*

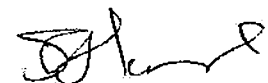
From the above grounds, Mr. Materu stated that it is clear that the decision sought to be challenged pose matters of points of laws and fact fit to attract the attention of the Court of Appeal which might come with a very good decision in favour of the Applicant.

He thus, prayed the Court to grant leave to appeal to the Court of Appeal and to certify existence of points of law worth to be determined by the Court of Appeal plus costs of the case.

In reply, the Respondents on the outset contended that the applicant's submission lacks good cause to suffice prayers laid down in his chamber summons.

The Respondents also countered the brief history presented by Mr. Materu for the Applicant.

The Respondents argued that granting leave is not automatic rather upon the Applicant showing good cause that there is a point of law worth to be determined by the Court of Appeal.



It was further submitted that appellate courts decisions are clear and just so the grounds which were laid down by the Applicant's counsel are not legal points.

The Respondents stated further that, it is the applicant's trick of trying to disturb the Respondents over a quite use and possession of the suit land. Respondents were of the view that allowing this application shall delay the Respondents' rights over the suit land which they have enjoyed since 1977 to date. They added that, it will result to an endless litigation whereby the Respondent will be prejudiced.

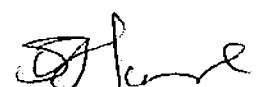
The Respondents prayed for dismissal of the application with costs.

I have scrutinized the affidavits and submissions by both parties, the issue for determination is *whether this application deserves to be granted*.

The Applicant through his advocate prayed this Court to grant leave and to certify points of law worth to be determined by the Court of Appeal. The law is very clear on the application of this nature. **Section 47(3) of Land Disputes Courts Act (supra)** provides that:

(3) 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 above provision was emphasised in the case of **Idi Tanu vs Abilo Nyamsangya, Civil Appeal No. 461 of 2020**. The High Court is vested with exclusive jurisdiction to certify points of law. Therefore, the Applicant's counsel was duly bound to present to this court the grounds on point of law worth to be determined by the Court of Appeal.



Under paragraph 7 of the Applicant's affidavit deponed by the learned advocate for the Applicant, grounds which he termed as point of laws have been stated.

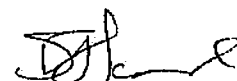
With due respect, the said grounds are factual issues which concerns how the courts evaluated evidence and not point of laws. Points of law are like jurisdiction, locus stand; time limitation issues and so forth.

In the case of **Magige Nyamoyo Kisinja vs Merania Mapambo Machiwa, Civil Appeal No.87 of 2018**, the Court of Appeal of Tanzania at page 7 of its judgment stated that; -

*"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.**" (Emphasis added)*

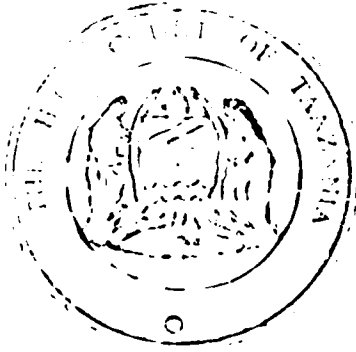
In the circumstances, having this authority in mind, I am satisfied that there is no point of law which has been presented by Mr. Materu for this Court to certify the same to be worth to be determined by the Court of Appeal.

In the upshot, I dismiss this application with costs.



It is so ordered.

Dated and delivered at Moshi this 17th day of December,2021.



A handwritten signature in black ink, appearing to read "S. H. Simfukwe".

S. H. SIMFUKWE

JUDGE

17/12/2021