

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)
AT BUKOBA
MISC. LAND APPLICATION NO. 136 OF 2021

(Arising from the High Court of Tanzania (Bukoba District Registry) in Land Case Appeal No. 15 of 2021 and District Land and Housing Tribunal for Bukoba at Kagera in Application No. 101 of 2018 and original Civil Case No. 9 of 2012 Rukoma Ward Tribunal)

DEOGRATIAS JOSEPH..... APPELLANT

VERSUS

PETRONIDA KATARAHIA..... RESPONDENT

RULING

Date of Ruling: 01.04.2022

A.Y. Mwenda, J.

The applicant Mr. Deogratias Joseph filed the present application with two prayers. Firstly leave to appeal to the Court of Appeal and secondly certification that there are points of law involved in appeal which is a mixture of criminal and civil complaint and composition of the ward tribunal.

During the hearing of this application the applicant was represented by Mr. Peter Matete the learned counsel while the respondent did not enter appearance before the court. Following a proof of service this court ordered exparte hearing to proceed.

Facts giving rise to this application are that before Rukoma Ward tribunal the respondent sued the applicant for trespass into respondent's land and at the end of the day the judgment was pronounced in the respondent's favour. Aggrieved, the applicant appealed before the District Land and Housing Tribunal for Bukoba at Kagera where the Hon. Chairman upheld the ward tribunal's decision by declaring the respondent as the lawful owner of the Suitland and also ordered payment of costs and compensation to the respondent. However the criminal orders issued by the Ward Tribunal were quashed. Again aggrieved by the decision of the District Land and Housing Tribunal the applicant appealed to this court where he also lost. Dissatisfied the applicant is seeking leave to appeal to the Court of Appeal and for certification by this court that there are points of law to be determined by the court of appeal which are;

- i) Mixing up of criminal and civil matters before the ward tribunal
- ii) Composition of the ward tribunal

Submitting in support of the application Mr. Matete learned counsel for the applicant stated that this is an application for leave to appeal and certification of point of law. He prayed his affidavit to be adopted and form part of his submission.

The learned counsel submitted that it is the requirement of law that matter emanating from ward tribunal should secure leave and certification of point of law before filing an appeal to the Court of Appeal. He said that the decision

before the ward Tribunal are tainted with anomalies which he think the Court of Appeal should deal with them. He said the 4th paragraph of his affidavit there are mixture of criminal and civil complaints that is "shitaka kosa la kuvaamia mashamba mawili ya ardhi na kunyang'anywa jembe moja."

He further submitted that another issue for certification is the issue of composition of the tribunal in that members before the tribunal were three (3) instead of four (4) members. He concluded by praying for this court to grant leave and certification that the points of law are involved.

Having examined the submissions by the counsel for the applicant as well as the court records it is high time that this court deliberate on the merits of the application.

In the chamber application the applicant cited section 5(1) (c and 5(2) (c of the Appellate Jurisdiction Act [CAP 141 R.E 2019] and section 47(2) and (b) of the Land Dispute Court Act [CAP 216 R.E 2019].

Section 47(3) of the land Dispute Court Act provides that as follows:

"Where an appeal to the court of appeal originates from the ward tribunal the appellant shall be required to seek for the certification from the High Court certifying that there is point of law involved in appeal."

The takeaway from the above 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. See ***Pili M. Kavuye v Zawadi James Mlimila (Administrator of the estate of the late Paulina Nduguru) Misc. Land Case Application No. 106 of 2016*** HC (unreported) and ***Jerome Michael vs. Joshua Okonda Civil Appeal No. 19 of 2014*** (unreported).

In the present application, this court noted the following. In the point regarding the composition of the Ward Tribunal the learned counsel for the applicant submitted that the ward tribunal was not well composed as the members were only three instead of four members. This court having gone through the Ward Tribunal's records found out that assessors are only listed by numbers without mentioning their names and gender as per requirement of the law. This court finds this point of law worth to be certified as I accordingly do.

In regard to the second issue of mixing up of civil and criminal complaints before the Ward tribunal, this court having perused the proceedings of ward tribunal found out that it is true that there was a mixing of civil and criminal complaints. However, before the District Land Housing Tribunal the said criminal orders were quashed and the same decision was maintained by this court. This court is of the view therefore that this issue was determined and it is hereby rejected.

In the view of the above analysis, this application is hereby by allowed to the extent demonstrated above. Each party shall bear its own costs.

It is so ordered.



A.Y. Mwenda

Judge

01.04.2022

This ruling is delivered in chamber under the seal of this court in presence of Mr. Peter Matete the learned counsel for the applicant and in the absence of the respondent.



A.Y. Mwenda

Judge

01.04.2022