

**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 High Court of Tanzania Misc. Land Case Appeal No. 16 of 2021 and Bukoba District land and Housing Tribunal Land Appeal No. 76 of 2019 and Bwanjai Ward Tribunal Case No. 34 of 2011)*

**SHaidu ISSACK..... APPLICANT**

**VERSUS**

**HALMASHAURI YA KIJIKI BUKABUYE..... RESPONDENT**

**RULING**

*Date of Ruling: 29.03.2022.*

*A.Y. Mwenda, J.*

SHaidu ISSACK (the applicant) through the services of learned Counsel one Mr. Alli Chamani, 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 the appeal such as composition and participation of the Ward Tribunal's Members, want of assessors' opinion in the record of the first appellate tribunal and legality of the respondent in acquisition of land.

In response, Halmashauri ya Kijiji cha Bukabuye, through the services of Ms. Sarafina Rwegasira contested this application by filing a counter affidavit.

Facts giving rise to this application are that, before the Bwanjai Ward Tribunal the respondent sued the applicant for trespass into the 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 Kagera at Bukoba where the Hon. Chairman dismissed the appeal. Again, aggrieved by the decision of the District Land and Housing Tribunal, the applicant appealed before this Court where he also lost. Dissatisfied the applicant is seeking leave to appeal to the court of appeal and a certification by this court that there are points of law to be determined by the court of appeal. The point sought to be certified are:

5 (i). *Whether the composition of the members of trial tribunal were proper in terms of disclosing the gender and indicating the coram per every sitting thereat as per section 11 of the Land Disputes court Act, Cap 216 R.E 2002;*

(ii). *Whether the assessors opinion at the first appellate tribunal were composed in the record and read to the parties before delivery of the judgment;*

(iii). *Whether the respondent, who was the claimant at the trial tribunal had legally acquired the Suitland by complying with the relevant prescribed legal procedure for a Village Council to own the land;*

(iv). *Whether in law the respondent proved her status as a corporate body before suing the respondent.*

When this application was set for hearing Mr. Alli Chamani, learned counsel appeared for the applicant and for the respondent Ms. Sarafina learned State Attorney was in attendance.

Submitting in support of the application Mr. Alli Chamani stated that this application is for leave to appeal to Court of Appeal of Tanzania and certification that there are points of law to be heard by the Court of Appeal of Tanzania. He said this application is accompanied by a chamber summons and affidavit, and he prayed them to be adopted as part of his submissions.

The learned Counsel submitted that this application emanates from a civil case before the Ward Tribunal which necessitate two applications mentioned above. He then cited a case of ***Jerome Michael vs. Joshua Oranda Civil Appeal No. 19/2018 Court of Appeal of Tanzania*** to support this argument.

He said, leave is granted if the application contain grounds which are not frivolous or vexatious and in support thereof he cited the case of ***BBC vs. Eric Sikujua Ng'mavyo, Civil Application No. 138 of 2004, Court of Appeal of Tanzania*** at page 7, 2<sup>nd</sup> .He added that this application is not frivolous and in support to this argument he cited a case ***of Bulyanhulu Gold Mine Ltd and two others vs. Petrolube (T) Limited and another, Civil Application No. 364/16 of 2017,*** Court of Appeal of Tanzania page 12 2<sup>nd</sup> para.

The learned Counsel submitted further that the role of this court is to consider if there are arguable of appeal.

In this case he said, this is an intended third appeal and they intend to go to the Court of Appeal on grounds raised in para 5 of the applicant's affidavit which contain 4 issues. In support of the first issue in para 5 (i) he cited a case ***of Edward Kubingwa vs. Metrida A. Pima Civil Appeal No. 107/2018*** at page 6 where it was stressed that gender of members should be disclosed. He said, in the proceedings before Ward Tribunal dated 8/11/2011 members listed are 4 but their gender was not disclosed. Also, at page 1 of judgment, he said, one member called B. Ishengoma is not the one who appeared rather it was one Feliciana Felijisto. To him this irregularity fit to be tabled before the Court of for determination.

The learned counsel for the applicant further submitted that the second point of law is in para 5(ii) which is lack of assessors' opinion before the first appellate tribunal. He said assessors' opinion in the first appellate court was not properly composed nor read to the parties before judgment. In support to this point he cited the case of **Sikuzani Saidi Magambo and another vs. Mohamed Roble, Civil Appeal No. 197 of 2018** where it was held that assessors' opinion must be part of the record and read before the parties. He thus prayed this point to be certified.

With regard to the issue in para 5(iii) the learned counsel for the applicant submitted that the procedures prescribed for villages to acquire land are stipulated under S.118 of Local Government (District Authority) [Cap 287 R.E 2002] and one of condition is to acquire consent from the relevant Ministry for Local Government. In support to this argument he cited the case of ***Clowles Mushatsi and another vs. Ngara District Council and two others, Land Case No. 8/2016*** page 21 (HC). He prayed this point to also be certified as point of law.

With regard to the last point the learned counsel submitted that the respondent had no status of corporate body to acquire the status to sue. He said under S. 26(1) and 2(b) of Local Government (District Authority) Acts [Cap 287 RE 2002] a village issued with a certificate of Registration acquires a status of a cooperate body. But in our records, he said, there is nowhere it is stated that the respondent is a body corporate. He said S. 59 of Evidence Act, [Cap 6 RE 2019] provides matters to be taken under judicial notice but registration of village council is not one of them. For that matter, he concluded by praying these matters to be certified as points of law.

Responding to the submission by the learned counsel for the applicant, Ms. Sarafina Rwegasira, learned State Attorney begun by praying the counter affidavit to be adopted as part to their submission.

The learned State Attorney submitted that all the points raised by the counsel for the applicant are new matters which were not discussed before this court at the

second appeal. She said, even the status of the village was not at issue before the High Court and added that these points ought to be raised and discussed at lower levels. To this point, she cited the case of ***IDI TANU VS. OBILO NYAMSANCISA, Misc. Land Appeal No. 27/2020 HC.***

She also cited the case of ***Hotel Travertine Ltd and two others vs. NBC [2006] 133*** where the Court of Appeal held that as matter of general principle, an appellate court cannot allow matters not taken or pleaded in the court below to be raised on appeal.

With regard to composition of Ward tribunal the learned State Attorney submitted that gender was indicated in the bracketS as (Bi) and for others it was not which to her, entail they are all males.

With regard to submission that there were no opinion of assessors before the District Land and Housing Tribunal the learned State Attorney submitted that the assessors were not in the proceedings although in the judgment their opinion was recorded.

On issued raised in para. 5(iii) of the applicant's affidavit, the learned state Attorney submitted that this is not a point of law, rather a point of facts a proof of which relies on evidence. Also on issues raised in para 5(iv) of the applicant's affidavit, the learned State Attorney submitted that registration of the village is a point of fact provable upon search. She then concluded by submitting that if this court finds that there are points of law worthy to be certified then it is prayed that



the respondent be exempted from paying costs as the anomalies in para (i) and (ii) if certified, were the tribunal's fault.

In Rejoinder Mr. Alli Chamani, learned Counsel for the applicant submitted that failure to discuss the points of Law raised before the trial court and the 1<sup>st</sup> appellate court are baseless as these are points of law which need be raised at any time.

Having examined the rival submissions of the parties' as well as the court's record the issue is whether this application is tenable.

This application is brought under Section 47 (3) of the Land Disputes Court Act [Cap 216 RE 2019]. This Section read as follows:

***"47 (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 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 NDUNGURU), Misc. Land Case Application No. 1106 of 2016**, HC (unreported), **JEROME MICHAEL V. JOSHUA OKONDA, Civil Appeal No. 19 of 2014** (unreported).





Guided by the above position now this court analyzes the points raised as follows. In the first point the counsel for the applicant submitted that the composition of members of the trial tribunal was not proper for failure to disclose the gender and indicating the quoram per every sitting. The basis of this argument is that before the ward tribunal the gender of some members was not indicated. By looking at this point it is intended to question whether the trial tribunal was properly constituted. I accordingly certify this point.

The second point is whether the assessors' opinion at the first appellate tribunal were composed in the record and read to the parties before delivery of judgment. The basis of the complaint is that the assessors' opinion was not read to the parties before the judgment was read. This too is a point of law worth to be certified. I accordingly certify it. The learned State Attorney was of the view that these points were not raised at the courts below, but as it was rightly submitted by Mr. Chamani, points of law can be raised at any time.


On whether the respondent, who was the claimant at the trial tribunal had legally acquired the Suitland by complying with the relevant prescribed legal procedures for a Village Council to own the land and whether in law the respondent proved her status as a corporate body before suing the respondent these are points of facts which need proof through evidence. I accordingly reject them.

In view of the above analysis, I allow the application to the extent demonstrated above. Each party shall bear its own costs.



It is so ordered.



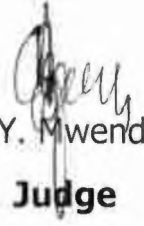
  
A.Y. Mwenda

**Judge**

29.03.2022

This Ruling is delivered in chamber under the seal of this court in the presence of the applicant and in the presence of the respondent.



  
A.Y. Mwenda

**Judge**

29.03.2022

