

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**MISCELLANEOUS LAND APPLICATION NO. 97 OF 2021**

*(Arising from the decision of this Court in Land Appeal No. 37 of 2021, F.H. Mahimbali, J.)*

**BETWEEN**

**GALUS AIDHA OGONGA ..... APPLICANT**

**VERSUS**

**JOSHUA ODERO ..... RESPONDENT**

**RULING**

*24<sup>th</sup> March & 29<sup>th</sup> April, 2022*

**A. A. MBAGWA, J.**

This is an application for certification as to the points of law. The applicant, Galus Aidha Ogonga by the way of chamber summons made under section 47 (2) and (3) of the Land Disputes Courts Act [Cap 216 R.E 2019] brought this application. He seeks this Court to certify a point of law worth to be considered by the Court of Appeal of Tanzania from the judgment and decree delivered by this Court (F.H. Mahimbali, J.) on 31<sup>st</sup> August, 2021 in Miscellaneous Land Appeal No. 37 of 2021.

Briefly, the respondent lodged a land complaint before Mirare Ward Tribunal (the trial Tribunal) claiming that the applicant had invaded his piece of land. The applicant told the Tribunal that he acquired the disputed land from the village council committee in a year 1992 as the land was an open area. The applicant disputed the respondent claim. He accounted

that the village council land committee allocated him the disputed land before operation vijiji. At the end, the Ward Tribunal decided the matter in favour of the respondent. The applicant was aggrieved by the decision. However, he unsuccessfully appealed to the District Land and Housing Tribunal for Tarime at Tarime (the first appellate Tribunal) and this Court. The applicant is still determined to appeal to the Court of Appeal hence this application.

The application is supported by affidavit sworn by the applicant. In contrast, the respondent contested the application through a counter affidavit.

When the matter came up for hearing, the applicant was represented by Mr. Baraka Makowe, learned advocate while the respondent defended for himself.

Submitting in supporting the application, Mr. Makowe averred that the applicant has good points worth to be considered by the Court of Appeal. He proceeded that, according to the judgment of the Ward Tribunal dated 30<sup>th</sup> January, 2020, the complainant Joshua Odero stated that the dispute was once attended by the village land committee before it went to the Ward Tribunal. He was thus of the view that the matter ought to be referred by the village land committee and not to be instituted by the respondent as a fresh complaint.

Mr. Makowe further referred to paragraph 3 of the affidavit and argued that the disputed land is located within Rorya District but the appeal was heard by District Land and Housing Tribunal for Tarime whereas the Government Notice which established the District Land and Housing Tribunal for Tarime covers only Tarime. However, when he was probed by the Court, Makowe was unable to cite a specific regulation which excludes Rorya from the jurisdiction of the DLHT for Tarime. He added that, the applicant was not given the opportunity to ask question in relation to the exhibits tendered.

The respondent, being a layperson, did not submit much in response to Mr. Makowe's submission. He only stated that he opposes the application. Having appraised the submissions and the record, the issue for deliberation is whether the applicant has advanced a point of law worth of consideration by the Court of Appeal.

The law is settled that the court, in certifying the point of law, has to evaluate the proposed points of law and satisfy itself whether they are worth to be certified to the Court of Appeal. See **Dorina N. Mkumwa vs. Edwin David Hamis**, Civil Appeal No.53 of 2017) [2018] TZCA 221. In our case, the applicant did not put clear on what point (s) he proposed to be certified as a point of law. Nonetheless, upon reading paragraphs 3 to 5 of the applicant's affidavit, the following can be gleaned from:


1. That the High Court negated the issue of territorial jurisdiction.
2. That the High Court failed to discuss the issues of law exhaustively.
3. That the High Court failed to call for additional evidence.

Having canvassed the applicant's affidavit and the arguments made by Mr. Makowe, it is my considered view that there is no point of law worth of consideration by the Court of Appeal. Further, the proposed issue regarding the jurisdiction of District Land and Housing Tribunal calls for evidence as the applicant counsel did not provide that Government Notice which established the District Land and Housing for Tarime to prove that it does not cover Rorya given that Rorya was part of Tarime District.


In the event, I find the application unfounded and consequently dismiss it. The applicant is ordered to pay costs.

It is so ordered.



  
**A. A. Mbagwa**  
**JUDGE**  
**29/04/2022**

**Court:** This ruling has been delivered in the presence of the applicant and respondent this 29<sup>th</sup> day of April, 2022.

  
**A. A. Mbagwa**  
**JUDGE**  
**29/04/2022**