

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA DISTRICT REGISTRY)**

AT MWANZA

MISC. LAND APPLICATION NO.83 OF 2021

(Arising from Judgment of the High Court of Tanzania at Mwanza in Misc. Land Appeal No. 57 of 2019 dated 19/02/2021 Delivered By, Hon. Manyanda J, Originating from the decision of Bukandwe Ward Tribunal in Land Application No. 01 of 2018.)

SUMAI GISABU..... APPLICANT

VERSUS

MARIA KASUMBAKABO..... RESPONDENT

RULING

21st April & 19th August, 2022

ITEMBA, J.

The applicant herein intends to move the Court to certify that a point of law, worth a consideration by the Court of Appeal of Tanzania, exists in the appeal that he intends to file. The impending appeal is against the decision of the Court (Hon. Manyanda, J.) that allowed the appeal and declared the respondent to be the lawful owner of the disputed land.

The appellant is aggrieved by such decision and has preferred this application under the provisions of ***Section 47 (3) of the Land Disputes Courts*** Act, Cap. 216 R.E. 2019. The application is supported by an affidavit of Mr. Sumai Gisabu, the applicant, and it sets out grounds on which the application is based.

Facts constituting the basis for this application are gathered from the supporting affidavit and proceedings, briefly are as follows:

On the 14th November 2018 the respondent was declared by the Trial Ward Tribunal the lawful owner of the suit land. The applicant was unhappy with the decision and he immediately filed an appeal to the District Land and Housing Tribunal (DLHT) in which it was decided in his favour.

The respondent being aggrieved by such holding she successfully appealed to this Court in which the DLHT decision and decree thereof were set aside and restored the decision of the trial Ward Tribunal of Bukandwe. The applicant is still determined to pursue his right, he is now before this Court seeking certification on point of law which will enable him to challenge this Court's decision in the Court of Appeal of Tanzania.

When the matter came up for hearing on 21st April 2022 Ms. Hidaya Haruna advocate, appeared for the applicant. Neither the respondent nor her advocate appeared in Court, as the respondent was aware of the application but chose not to appear hence, the application was heard *ex parte*. Ms. Haruna submitted that the applicant is intended to move this Court to grant certificate on point of law which will enable the applicant to appeal to the Court of Appeal. The counsel submitted that four points of law are extracted from the impugned decision. These are: (i) Whether

the honourable Judge was right to sustain the decision of the Ward Tribunal which was filed out of time, (ii) Whether honourable Judge was right to decide that the respondent had *locus stand* to institute the case against the applicant as legal representative of her father without any legal document appointing her as administratrix of the estate of her late father, (iii) Whether the honourable Judge was right to disregard the illegality committed by the Ward Tribunal during hearing of the case concerning pecuniary jurisdiction and the quorum of the members who determined and decided the matter and (iv) Whether it was mandatory for the applicant to produce the sale agreement during the trial.

Submitting in support of the application Ms. Haruna's contention is that, the only person with *locus stand* to institute the case on behalf of the deceased person is the person appointed by the Court as an administrator or administratrix and not otherwise. She insists that in the Ward Tribunal proceedings, it appears the respondent named herself as a representative and sometimes she claims to be the owner of the suit land. She supported her averments with the decision in the case of ***Omary Yusuph vs Albert Munuo***, Civil Appeal No. 12 of 2018 CAT at Dar es Salaam.

In respect of the first ground, she contends that the matter was filed out of time contrary to the provisions under ***Part 1, Item 21 of the***

Schedule of Law of Limitation Act, Cap 89 R.E 2019 as the deceased had died 22 years earlier before institution of the suit and the applicant was in possession of the suit land.

On the third ground she avers that the trial Ward decision was composed of 3 members contrary to the provisions under Ward Tribunal Act which requires members to be not less than 4. She further averred that the issue of quorum is a jurisdictional matter hence such illegality affected the rights of the parties.

In regard to the sale agreement, she holds the view that, since the same was not tendered to form part of proceedings in the trial Ward Tribunal therefore, the High Court erred when it stated that the applicant could not call the seller of the plot to give testimony.

Having heard the submission made by the counsel for the applicant, the Court's duty, at this stage of the proceedings, is to determine as to whether the instant application meets the threshold requisite for certification of a point of law that warrants the attention of the Court of Appeal.

It is a settled position that appeals to the Court of Appeal, in respect of matters originating from either the Ward Tribunal or Primary Court, must undergo a process that involves ascertaining if the intended appeal

by the losing party carries a point of law of sufficient importance, worth of and relevant for consideration by the Court of Appeal. With respect to land matters, this requirement is provided for under **Section 47 (3) of the Land Disputes Courts Act**, Cap. 216 R.E. 2019 which states as follows:

'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.'

This position of law has been emphasized in numerous decisions in this Court and the Court of Appeal. These include **Dickson Rubingwa v. Paulo Lazaro**, CAT-Civil Application No. 1 Of 2008; **Harban Haji Mosi & Another v. Omari Hila Seif**, CAT-Civil Reference No. 19 of 1997; **Nurbhim Ruttensi vs Minister of Water Constructors Energy and Investment**, [2005 TLR. 220], and **Marco Kimiri & Another v. Naishoki Eliau Kimiri**, CAT-Civil Appeal No. 39 of 2012 (all unreported).

In the decision of **Abdallah Matata v. Raphael Mwaja**, CAT-Criminal Appeal No. 191 of 2013 (DSM-unreported), the Court of Appeal summarized the imperative requirement of certifying the point of law, thus:

'In order to lodge a competent appeal to the Court, the intended appellant has to go through the High Court first with an application for a certificate that there is a point of law involved in the intended appeal. It is only when the appellant is armed with the certificate from the High Court, that a competent appeal may be instituted in this Court.'

I will not venture on the issue of pecuniary jurisdiction which application did not submit on the same.

Having gone through the affidavit that supports the application and the applicant's submission, I am convinced that the concern raised by the applicant constitutes serious points of law, sufficient to draw the attention of the Court of Appeal's engagement and make a finding thereon. These points are, as stated earlier on, based on paragraph 8 (i), (ii) and (iii) of the supporting affidavit and they are:

- 1. Whether the honourable Judge was right to sustain the decision of the Ward Tribunal which was filed out of time.*
- 2. Whether the honourable Judge was right to decide that the respondent had locus stand to institute the case against the applicant as legal representative of her father without document being appointed administratrix of the estate of her late father.*

3. *Whether the honourable Judge was right to disregard the illegality committed by the Ward Tribunal during hearing of the case concerning quorum of members of the tribunal.*
4. *Whether a party to the contract need to testify once the said contract is admitted as exhibit.*

From the foregoing arguments, I am of the firm view that the application meets the legal threshold for its grant. Consequently, I grant it as prayed. Costs to be in the cause.

It is so ordered.

DATED at **MWANZA** this 19 day of August, 2022.

