

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPEAL NO. 105 2021

(C/F Misc. Land Appeal No. 47 of 2010, land Appeal No. 7 of 2010, in the District Land and Housing Tribunal for Karatu at Karatu, Original Land Case No. 36 of 2009 before the Qurus Ward Tribunal)

FAUSTINE MCHUNO..... APPELLANT

VERSUS

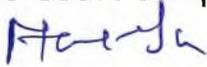
MELKIOR HURBERT ASSEY..... RESPONDENT

RULING

22 & 30.08.2022

MWASEBA, J.

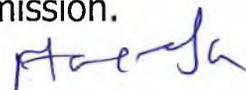
As a consequence of being dissatisfied by the decision of this Court in Misc. Land Appeal No. 4 of 2014, the applicant lodged this application by way of chamber summons supported by his own affidavit urging this Court to grant certificate on points of law to appeal to the Court of Appeal.



The application has been preferred under the provisions of Section 47 (3) of the Land Disputes Courts Act, Cap 216 R.E 2019. According to the affidavit deponed by the Applicant on 19th day of November 2022 under paragraph 8, the following are the grounds required for certification:

- i) Whether the Judge of the High Court was justified in declaring the Respondent the lawful owner of the suit land measuring two acres contrary to the evidence on record.
- ii) Whether the Judge of the High Court was justified in declaring the respondent the lawful owner of the suit land measuring two acres in the absence of the counter claim by the respondent against the Vendor; the original owner of the Suit land.
- iii) Whether the Judge of the High Court was justified in holding that the Vendor had a cause of action for damages or for specific performance for breach of the terms of the agreement and not the Respondent to do so.

At the hearing of this application on the 22nd day of August 2022, the applicant appeared in person, unrepresented whereas the Respondent was represented by Mr. Oscar Frumence Mushi, learned counsel. The application was disposed of by way of written submission.



Arguing in support of the application, the applicant was brief and he submitted that the he was declared a lawful owner of the whole two acres of the disputed land by the Ward tribunal. The respondent became unhappy and appealed to the District Land and Housing Tribunal where he was declared the lawful owner of one acre. Being aggrieved the applicant successfully appealed to the High Court and he was awarded his two acres on 30.11.2011. However, the said judgment was set aside by Gwae J, and each party was given a chance to be heard where the applicant lost the case. Based on the cited decisions he wants the Court of Appeal to interfere for the end of justice.

In reply, Mr Mushi submitted on behalf of the respondent that the raised grounds to be certified as points of law are not worthy of certification. That is due to the reasons that the points raised contained factual issues and not point of law as required under **Section 47 (3) of the Land Disputes Courts Act**, Cap 216 R.E 2019. To cement his argument he cited the case of **Rashid Rashid Mniposa Vs Lyeha Jamali Msosi**, Civil Appeal No. 15 of 2022 and **Magige Nyamoyo Kisinja Vs Merania Mapambo Machiwa**, Civil Appeal No. 87 of 2018 (both CAT-Unreported). He submitted further that, the arguments on how the court evaluated the evidence cannot stand as a point of law like jurisdiction,

ptaceca

time limitation, locus stand and so forth. For the said reasons he prayed for the application to be dismissed with costs.

In his rejoinder, the applicant proceeded to evaluate the evidence as submitted in the previous cases and the way the ward tribunal delivered the judgment in his favour without sticking to the point raised for the determination by the Court of Appeal.

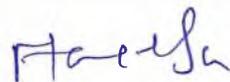
Having gone through the arguments raised by the parties in this application, this court will now determine the issue of whether the application has merit.

Section 47 (3) of the Land Disputes Courts Act, Cap 216 R.E 2019 provides that:

*"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.**"*

(Emphasis added)

Guided by the cited provision, for an appeal that originates from the Ward Tribunal to be placed before the Court of Appeal, a certificate on point of law is mandatory.



Looking at the contents of paragraph 8 (i), (ii) and (iii) of the Applicant's Affidavit, the Applicant intends to challenge the way in which the High court evaluated the evidence in general before reaching its decision. In his written submission what was submitted by the applicant does not reflect the points raised in his affidavit under paragraph 8 (i) – (iii). Similarly, it was submitted by the respondent's counsel that the raised points contained merely factual issues and not points of law as required by the law. Further to that, even the applicant himself failed to elaborate on how his points are pure points of law worthy of determination by the Court of appeal.

In **Dorina N. Mkumwa Vs Edwin David Hamis**, Civil Appeal No. 57 of 2017, the Court of Appeal regarding application on certificate on point of law, emphasised that: -

" It is therefore self-evident that applications for Certificates of the High Court on points of law are serious applications. Therefore, when High Court receives applications to certify point of law, we expect Rulings showing serious evaluation of the question whether what is proposed as a point of law, is worth to be certified to the Court of Appeal. This Court does not expect the certifying High Court to act as an uncritical conduit to allow whatsoever the intending

High

appellant proposes as point of law to be perfunctorily forwarded to the Court as point of law. "

Being guided by the above authority, and for the foregone reasons, the points of law proposed by the applicant are hereby rejected for want of deliberation. Thus, the application is dismissed with no order as to costs.

It is so ordered.

DATED at ARUSHA this 30th day of August 2022.




N.R. MWASEBA

JUDGE

30.08.2022