

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC LAND CASE APPLICATION No. 117 OF 2021

(Originating from the decision of the District land and Housing Tribunal of Mbulu at Dongobesh in Misc land application No. 10 of 2018, C/F Land appeal No. 85 of 2017 originating from Ayamohe Ward Tribunal Application No. 10 of 2017)

VALERIAN FIITAAPPLICANT

VERSUS

ISSA SAID QAMAAY.....RESPONDENT

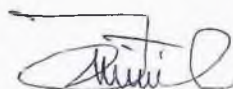
RULING

27TH July & 26TH August 2022

TIGANGA, J

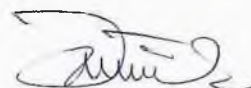
The applicant herein applies for the certification of the point of law under section 47(3) of the Land Disputes Courts Act, [Cap 216 R:E 2019], he moved this court by way of chamber summons which was supported by the affidavit sworn by one Valerian Fiita, the Applicant.

The points of law which the apply for this court to certify are for consideration by the Court of Appeal are as follows;



- i. Whether the Honourable Judge of the High court was justified in dismissing the appeal without putting his broad mind to the facts of the matter in controversy according to the entire evidence on record as adduced by the Parties.
- ii. Whether the Honourable Judge of the High court was justified in holding that the applicant had not given sufficient reasons for the restoration of the appeal in defiance of the strings of authorities as to that aspect.
- iii. Whether the Honourable Judge of the High court was justified in holding that the applicant had not given sufficient reasons for the restoration of the appeal without consideration of the degree of prejudice to the Parties.

This application emanates from Application No. 10 of 2017 before Ayamohe ward Tribunal, in which the respondent successfully sued the applicant over the ownership and trespass in the suit land worth Tsh. 2,000,000/=. Aggrieved with the decision of the Ward Tribunal, he filed an appeal before the District Land and Housing Tribunal the of Mbulu District at Dongobeshi, which was dismissed for non appearance. Thereafter he filed Misc. Land Application No. 10 of 2018 asking the order to set aside the

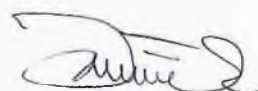


dismissal order, yet he was unsuccessful because the District Land and Housing Tribunal refused the application. Following his failure before the District Land and Housing Tribunal, he appealed before this court in Miscellaneous Land Case Appeal No. 15 of 2020 but also he didn't succeed.

Following that failure, he filed this application seeking this court to certify three points, which he considers to the point of law worthy for consideration by the Court of Appeal.

Parties appeared in person and argued their application orally. In the submission in chief, the applicant reiterated the content of the affidavit and submitted that he had evidence to prove his claim before the District Land and Housing Tribunal. he submitted further that, he attended almost the whole year but failed to appear for only single day on the 12th December 2017 and on that day the appeal was dismissed. He said further that, that the reason for his failure to enter appearance was sickness and on the 11th December 2017 he proved to have gone to the hospital but he was not listened.

He further submitted that, he had a title deed and he always pay the land rent every year but still the District Land and Housing Tribunal did not

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consider it. He also stated that, the appellate Tribunal did not even consider that the applicant was sick since he presented the Doctor's report.

In reply submissions, the respondent submitted that he had been in utilization of the suit property since the year 1996 and he was never disturbed till his father passed away. He also submitted that, he used the area till 2016 without any disturbance. In the year 2017 the applicant came and invaded the farm and cut banana plant grown in the particular farm. He further submitted that, he sued the respondent before the ward tribunal following, and succeeded. He submitted that the applicant failed to give evidence on how he obtained the suit land hence his appeals before the District Land and Housing Tribunal and before this Court lack merit as he has no proof on how he came into ownership of the same.

In rejoinder submissions, the applicant submitted that, if he has the right let the court be allowed to hear them for it decide the matter on merit. That marked the parties' submissions,

From the material before me, the issue for determination is whether the raised points of law are worth to be certified for consideration by the Court of Appeal

Looking at the application and the submission made in its support, and looking at the proposed points of law which are as

Firstly whether the Judge of the High Court was justified in dismissing the appeal without putting his broad mind to the facts of the matter in controversy according to the entire evidence on record as adduced by the Parties, **secondly** whether the Judge of the High court was justified in holding that the Applicant had not given sufficient reasons for the restoration of the appeal in defiance of the strings of authorities as to that aspect, **thirdly** whether the Judge of the High court was justified in holding that the Applicant had not given sufficient reasons for the restoration of the appeal without consideration of the degree of prejudice to the Parties.



With all due respect to the applicant, in my strong view, the three points are unworthy to be points of law, they are all factual issues which needs to be proved by evidence.

I hold so because the duty of this court under section 47(3) this court is required to certify that there are point of law involved in the appeal. If there is no point of law, then, this court has nothing to certify.

The Court of Appeal in the case of **Agnes Severin vs Musa Mdoe** ,[1989] TLR at 164 gave guidance on how to look at points of law for certification, it directed that, the court has to certify points of law as opposed to points of fact. In line with the above finding of the Court of Appeal, it is my considered view that the alleged points of law do not qualify to be points of law, they are points of facts not qualifying certification. That said, this application is hereby dismissed for want of merit. Given the nature of the matter before me, each party should bear own costs.

Order accordingly.

DATED at **ARUSHA** on the 26th August 2022.

 
J.C. TIGANGA
JUDGE