

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS LAND APPLICATION NO. 03 OF 2022

(Arising from Misc. Land Appeal No. 21 of 2020, High Court Mwanza, Land Appeal No. 71 of 2017 DHLT Mwanza and Land application no. 1 of 2017 Lyoma Ward Tribunal.)

MABULA SANANEAPPLICANT

VERSUS

PETRO MISALABARESPONDENT

RULING

24th May & 2nd September, 2022.

ITEMBA, J.

This application calls the Court to certify that the impending appeal carries a point of law worth a consideration by the Court of Appeal of Tanzania. The application is preferred under the provisions of section 47 (2) of the Land Disputes Act, Cap. 216 R.E. 2019; and it is supported by the applicant's own affidavit which sets out grounds for the prayers sought. What is perceived to be a point of law is contained in paragraph 5 of the supporting affidavit, as follows:

- 1. Whether the appellate Judge was justified to raise a new issue concerning the Applicant's locus standi to claim the clan shamba in question, which said issue was never canvassed by the parties in the two tribunals below.*

2. Whether the appellant Judge properly addressed his mind to the principles of law governing redemption of clan shambas.

3. Whether the appellant Judge was justified in interfering with the concurrent findings of the lower tribunals.

The respondent had filed a counter-affidavit in which the allegation levelled by the applicant were rebutted. He contends that the applicant has failed to establish clear point of law to be argued before the Court of Appeal.

Hearing of this application was done through oral submissions. Submitting in support of ground one, the learned counsel for the applicant, Mr. Nasimire, prayed that the affidavit in support of the application be adopted to form part of his submission. Briefly, he referred the court to the grounds of application as stated in paragraph 5 of the applicant's affidavit, and prayed for the application to be granted based on those grounds.

Replying to the submission in chief, the respondent's counsel Mr. Kinango, strongly disputed the application. Regarding the first point, he stated that the issue of *locus stand* was not new as it was first introduced before the District Land and Housing Tribunal (DLHT).

As regards the second and third point he submitted that the two do not qualify as points of law because the High Court Judgment was clear about the reasons for setting aside the lower courts' decision.

Given an opportunity to make a rejoinder, the learned counsel for the applicant basically stated that the counter affidavit did not challenge the application. That, all points raised are pure legal points and not factual which make the appeal arguable before the Court of Appeal.

From these brief submissions, the question is whether this application has met the threshold for certification of a point of law sufficient to warrant the attention of the Court of Appeal.

It is an established position that appeals to the Court of Appeal, in respect of matters which originate from ward tribunal have to be preceded by the Court's certification that there is a point of law worth and relevant for consideration by the superior Court. This is consistent with section 47 (2) and (3) of the Land Disputes Act, Cap. 216 R.E. 2019, of which the substance is provided as hereunder:

"A person who is aggrieved by the decision of the High Court in the exercise of its original jurisdiction may appeal to the Court of Appeal in accordance with the provisions of the Appellate Jurisdiction Act.

***(2)** A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction*

may, with leave of the High Court or Court of Appeal, appeal to the Court of Appeal.

(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 Land Disputes Courts Act [CAP. 216 R.E. 2019] 22 GN. No. 102 of 1979 (4) The procedure for appeal to the Court of Appeal under this section shall be governed by the Court of Appeal Rules”.

This statutory requirement was underscored by the Court of Appeal in a number of decisions which include: ***Omari Yusufu v. Mwajuma Yusufu & Another*** [1983] TLR 29; ***Dickson Rubingwa v. Paulo Lazaro***, -Civil Application No. 1 Of 2008 (CAT) and ***Harban Haji Mosi & Another v. Omari Hiia Seif***, -Civil Reference No. 19 of 1997 (CAT) (both unreported).

Having gone through the records it is noted that; the issue of *locus standi* was the 2nd ground of appeal filed before the High Court and it had featured in the High court judgement; and; in the course of hearing the appeal, it was argued whether the suit land was clan land and it was decided that there was no evidence to prove that. This being the application for certificate of point of law, I will limit myself from going into the merit of the intended appeal by stating that ***in facie eius***, these grounds qualify as points of law.

However, in respect of the third point, it is on record that the DLHT (Mwanza) decided in favor of appellant but Lyoma Ward Tribunal decided in favor of the respondent. Hence, there are no concurrent findings in the lower Tribunals as mentioned by the applicant. I therefore find the third ground not qualifying as a point of law.

That said, I find that there are two points of law which qualify for consideration by the Court of Appeal which are:

- 1. Whether the appellate Judge was justified to raise a new issue concerning the Applicant's locus standi to claim the clan shamba in question, which said issue was never canvassed by the parties in the two tribunals below.*
- 2. Whether the appellant Judge properly addressed his mind to the principles of law governing redemption of clan shambas.*

In the upshot, the application is allowed to the extent shown. I give no order as to costs.

It is so ordered.

DATED at **MWANZA** this 2nd day of September, 2022.

