

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISCELLANEOUS LAND APPLICATION NO. 86 OF 2021

(Arising from the decision of this Court in Miscellaneous Land Appeal No. 40 of 2021, F.H. Mahimbali, J.)

BETWEEN

SILA OBEL APPLICANT

VERSUS

CLEMENTINA KANGA RESPONDENT

RULING

A. A. MBAGWA, J.:

The application at hand is for certification of points of law. By the way of chamber summons premised under section 47 (2) and (3) of the Land Dispute Settlement Act [Cap 216 R.E 2019] the applicant, Sila Obel filed the current application seeking this Court to certify points 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 16th September, 2021 in Misc. Land Appeal No. 40 of 2021. The chamber summons is supported by an affidavit deposed by the applicant.

On the other hand, the respondent filed a counter affidavit to contest the application.

In a nutshell, the applicant filed the Land Case No. 19 of 2019 against the respondent before Kirogo Ward Tribunal in the district of Tarime. He

claimed the respondent to invade his piece of land which he inherited from his father. The applicant lost the suit. Again, he lost the appeal before the District Land and Housing Tribunal for Tarime at Tarime in Land Appeal No. 45 of 2020.

Untiringly, the applicant lodged the second appeal in this Court through Misc. Land Appeal No. 40 of 2021 but the odds were not in his favour as he lost again. Still determined, the applicant intends to appeal to the Court of Appeal, hence the application at hand.

When the application was called upon for hearing, both parties appeared in person, unrepresented.

Being the laypersons, both parties had nothing substantial to add to their depositions. The applicant prayed the court to consider his affidavit and allow the application. Similarly, the respondent adopted her counter affidavit and prayed the court to dismiss the application.

Having gone through the record and submissions by the parties, the issue for determination is whether the applicant has advanced a point (s) of law worth of consideration by the Court of Appeal.

It is the settled position of the law that, in certifying the point (s) of law, the court 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 this application, the applicant through paragraph 5 of his affidavit proposed five points this court has to certify as the points of law worth to be considered by the Court of Appeal of Tanzania. These are;

1. Whether or not appellate judge properly addressed himself in law on the principle governing the doctrine of adverse possession.
2. Whether the 2nd appellate court can ignore documentary evidence on the ground that the document was obtained by fraud without any proof.
3. Whether the presence of permanent crops amount to the ownership in the village land.
4. Whether the customary ownership of the land can be determined by the presence of clan minutes.

Looking at the applicant's proposed point (s), I am in no doubt that there are points of law worth consideration by the Court of Appeal. A point of law is a matter involving the application or interpretation of legal principles or statutes. It is the determination of what the law is and how it is applied to the facts in the case.

I agreed with the applicant that the first and fourth points are the points which are worth to be considered by the Court of Appeal of Tanzania.

Thus, I certify the following points of law to be considered by the Court of Appeal of Tanzania.

1. Whether or not appellate judge properly addressed himself in law on the principle governing the doctrine of adverse possession.
2. Whether the customary ownership of the land can be determined by the presence of clan minutes.

From the foregoing, I allow the application and certify these two points of law for determination by the Court of Appeal. Each party should bear its own costs.

It is so ordered.

Right of appeal is explained.




A. A. Mbagwa

JUDGE

15/09/2022

Court: Ruling has been delivered in the presence of both parties this 15th day of September, 2022.


A. A. Mbagwa

JUDGE

15/09/2022