

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

MISC. CIVIL APPLICATION NO. 25 OF 2022

*(Arising from the High Court of Tanzania (Bukoba Registry) in Civil Application No. 20 of 2021,
Muleba District Court Revision No. 4 of 2021 and Original Probate Cause No. 19 of 2021 from
Nshamba Primary Court)*

ADVENTINA LEOPARD1ST APPLICANT
GRACE LEOPORD2ND APPLICANT
JENESTA LEOPORD 3RD APPLICANT

VERSUS

ALLY BUSHAIJA1ST RESPONDENT
THEODORA BWEMERO..... 2ND RESPONDENT

RULING

Date of Ruling: 16.09.2022
A.Y. Mwenda, J.

Aggrieved by the decision of this court dated 08th April 2022, the Applicants lodged a notice of appeal intending to appeal against this court's decision to the Court of Appeal of Tanzania. In order to satisfy the requirement of lodging an appeal to the Court of Appeal, the applicant is required to be issued with a certificate that there is a point of law which needs the higher court's consideration and hence this application. It is brought under **section 5(2) (c) of the Appellate Jurisdiction Act [CAP 141 R.E 141]** and supported by affidavit sworn by Mr. Derick Zephurine, learned counsel for the applicant. In

counter thereof, the respondent filed a counter affidavit which was sworn by Ally Bushaija and Theodora Bwemero the respondents.

During the hearing of this application, the applicant enjoyed the services of Mr. Derick Zephurine, learned advocate while the respondents appeared in person without legal representation.

When invited by this court to submit in respect of the application, Mr. Zephurine prayed his affidavit to be adopted to form part of his oral submissions. He said this is an application to certify that there is point of law to go to the Court of Appeal.

The learned counsel raised two points to be certified by this court these are firstly that the respondent did not state the reasons for the delay to file probate cause for the past 32 years and secondly how the redeemer of the clan land becomes the owner of that land.

As for the first point the learned counsel submitted that in probate cases there is no time limitation to file the same. He said during trial before the primary court the respondents did not state what delayed them during all that time. However, he said, in the copy of judgment of the first appellate court the Hon. judge stated that during all that time since 1988 the deceased estate was never distributed. He said that being the case they did not advance sufficient reason for the delay to file a probate cause for over 32 years.

The learned counsel submitted that, another point of law to be certified is trite principle that the redeemer of clan land becomes the owner. With regard to this point, he submitted that the applicants having redeemed the land they stayed with it for over 12 years. He stated that once you redeem the land you become the owners. To support his arguments, he cited the case of THOMAS MATONDANE VS DIDASI MAWAKALILE [1989] TLR 210. He thus prayed this application to be allowed.

Responding to the applicant's submissions, the 1st respondent prayed their joint counter affidavit to be adopted to form part of his oral submission and prayed this application to be dismissed because the letter to redeem clan land was forged. Also, the 2nd respondent prayed the content of counter affidavit and court's record to be considered and this application be dismissed.

In rejoinder Mr. Zephurine submitted that the issue of forgery of the letter to redeem the clan land was never raised and what was discussed was only the ownership of Land. He thus prayed this application to be allowed.

Having gone through the submissions by both parties the issue for determination is whether this application is meritorious.

The law is settled that for all matters originating from the Primary Court a party wishing to access the Court of Appeal has to comply with the provisions of section 5(2) (c) of the Appellate Jurisdiction Act, which provides that;

"No appeal shall lie against any decision or order of the High Court in any proceedings under Head (c) of Part III of the Magistrates' Courts Act unless the High Court certifies that a point of law is involved in the decision or order."

In our present application the learned counsel for the applicant raised two points that this court should consider and issue a certificate that there is point of law to be determined by the Court of Appeal which are;

- 1) Failure to disclose the reason for the delay to file the probate cause after the lapse of 32 years.
- 2) The redeemer of clan land which has been pledged becomes the owner of the land.

With regard to the first point that before the trial court the respondents failed to disclose the reason for the delay to file the probate cause after the lapse of 32 years, this court went through the court's records and found out that the reasons for the delay was stated before the District Court in that, after the demise of the late Bwemero Karulema his properties were not distributed among the heirs and they were living in peace until when the dispute over the ownership of the land emerged and that was the reason which made them file the said probate cause. Even if there were no reasons advanced for delay to lodge a probate cause, since, as was pointed by Mr. Zephurine, there is no time

limitation to institute the same, then by itself, this issue is not point of law. It is just the matter of fact which was determined by the first appellate court and maintained by the second appellate court.

On the second point that the redeemer of clan land becomes the owner of the said land, the records show that before the trial court the respondents were appointed as administrators of the estate of the late Bwemero Karurema and after such appointment they collected and distributed deceased estates among the heirs and this is where the problem begun. From that point the applicants filed Civil Revision No. 4 before the District Court of Muleba claiming for the ownership of the distributed land. They alleged that distributed land was not the property of the late Bemero Karurema but it was the property of their late father's one Leopord Bwemero. At the end of the judicial day the District Court dismissed their claim on the reasons that the procedure for the appointment of the respondents to be administrators of the deceased estates by the Primary Court was proper. Aggrieved the applicants filed PC Civil Appeal No. 20 of 2021 before this Court and at the end of the day the Hon. Judge held that there is nothing to revise or correct in the decision and the proceedings of the trial Primary court and he upheld the decision of the District Court by dismissing it for lack of merits.

In the present application, the applicant's claimed they redeemed their father's land and automatically they become owners. Going through the court's records the issue in dispute is over the ownership of the land, that is whether the

distributed land was owned by the late Bemero Karurema or Leopord Bwemero. By looking at this issue it is evident that was never determined by any court of law. That being said this court finds the second point as brought prematurely as the ownership of the said land was never determined by any court of law. That being said, this court is of the view that the point of law raised are not worthy to be certified.

In view of the above, I thus find no merit in this application and it is hereby dismissed.

It is so ordered.

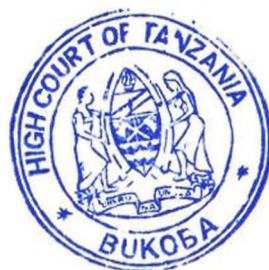


A.Y. Mwenda

Judge

16.09.2022

Ruling delivered in chamber under the seal of this court in the presence the Applicants Ms. Adventina Leopard the 1st Applicant and in the absence of the 2nd and 3rd Applicants and in the presence of the 1st Respondent Mr. Ally Bushaija and in the absence of 2nd respondent.



A.Y. Mwenda

Judge

16.09.2022