IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MWANZA

AT MWANZA

MISC. LAND APPLICATION NO.45 OF 2022

(Arising from Land Appeal No.24 of 2021 High Court Mwanza, Originating from Land Appeal No.23 of 2020 District Land and Housing Tribunal Mwanza)

TABU KULWA.....APPLICANT

Versus

VERONICA LUGOLA.....RESPONDENT

RULING

Sept.22nd & Oct. 5th, 2022

Morris, J

Tabu Kulwa, the applicant, having lost her second appeal before this Court, is still determined to take up a third attempt to the Court of Appeal. But she has to first obtain the Court's certificate pursuant to law. Hence, this application. The chamber summons supported with her affidavit is brought under section 5(2)(c) of the **Appellate Jurisdiction Act**, Cap.141 R.E. 2019 (AJA) and rule 45 (a) of the **Court of Appeal Rules**, 2019 (Rules).

From the records, the applicant and respondent had a polygamous marriage to the now late John Maganga. Their husband had apportioned the matrimonial land amongst them. Sometimes in 2001, the respondent

relocated to Ukerewe from Pasiansi for medical attention only to come back and find her portion of the plot in the occupation of the applicant's family. The dispute escalated to the trial Pasiansi Ward Tribunal, appellate Mwanza District Land and Housing Tribunal and second appellate High Court.

By leave of the court this application was heard by way of written submissions. Each party complied with the filing schedule. However, the court observed that the application has been preferred under wrong provisions of law. Being a crucial preliminary point of law, parties were ordered to address the court on this aspect simultaneously with the submissions for or against the application respectively. This ruling, therefore, covers both the preliminary matter and the main application.

Submitting in favour of the application, the applicant reproduces the paragraph 4(i) – (ix) of the affidavit which was filed on June, 15th 2022 without any significant analysis save for a mere sentence: "*Mheshimiwa Jaji, hizo ndizo pointi za kisheria anazoomba mleta maombi anaomba zithibitishwe na Mahakama Kuu, ili ziende kutatuliwa na Mahakama ya Rufaa ya Tanzania*". In an unofficial translation, the applicant is stating thus: "My Lord, the foregoing are points of law which the applicant is praying for certification by the High Court so that they may be determined by the Court of Appeal of Tanzania.

The above sweeping argument notwithstanding, in rejoinder, the applicant is referring to sections 57 63 of the **Law of Marriage Act**, Cap 29 R.E. 2019 whose effect is that spouses are subject of equitable enjoyment of matrimonial assets, liabilities and maintenance of spouses. The objective of introducing such provision is to cement her fact that the Court of Appeal would be moved to deliberate on whether or not the applicant was entitled to 50% of the matrimonial property following distribution/apportionment by her husband.

In reply, the respondent aggressively contested the application. She submitted that the application is hopelessly devoid of any merit. She argues that her counterpart is constantly in court only to deny the respondent of her due share of the matrimonial property. It is her further submissions that the whole application and submissions are a pack of facts and attack to analysis of evidence as done by both the trial and first appellate court. In her view, the applicant has not disclosed any point of law worth determination by the Court of Appeal.

Having summarized the submissions of parties above, this court finds it imperative to be guided by two issues in discharging this matter. Firstly, whether or not the application has been brough under proper law. Secondly, whether or not the applicant discloses a point of law for the Court of Appeal determination. I will discuss one issue at a time.

The first is in regard to appropriateness of the cited of law. As hinted before, this should have otherwise been raised as a preliminary objection by the respondent. But this was not raised or delt with until when the court discovered it immediately before hearing. All the same, parties were accorded an opportunity to address the court on such point. In this connection, the applicant decided to be untruthful. She submitted that the application, apart from the enabling laws and provisions thereof, the court is moved by section 47(1) (2) and (3) of the **Land Disputes Courts Act**, Cap 216 R.E. 2019 (LDCA). This intentional mislead to the court by the applicant renders her a negative impression of her demeanor. She stands the risk of being characterized as deceptive and thus less trusted. Consequences may obviously turn dire against credibility of her evidence throughout her litigation profile hereof.

I have taken interest in the documents presented to the court. The applicant only cited, as enabling law/provisions, section 5(2) of **AJA** and rule 45(a) of the **Rules** instead of section 47(3) of **LDCA**. The effect of wrong or non-citation of law renders the application incompetent. This position is traceable in various court proceedings **Godfrey Kimbe Applicant v Peter Ngonyani**, CAT-Dar Es Salaam, Civ. Appeal No. 41 of 2014 (unreported); **Husna Msusa v Mkurugenzi NMB Plc.**, Misc.

Application No. 37 of 2011 (unreported); and **Robert Leskar v Shibesh Abebe**, Civ. Application No. 4 of 2006.

In view of the above findings and analysis, the present application is incompetent for want of proper citation of the enabling law. This holding fully determines this application by striking it out. However, the court will endeavor to also discuss and decide on the second issue because; one, I already have indicated that the non-citation aspect was raised at about the hearing session. So, it will serve less value, in terms of time, to determine the application solely on this point. Two, and most importantly, if the application will be struck out on the basis of the first issue; the applicant will be entitled to refile the application appropriately. In doing so, if she retains the present less-founded grounds, as I will reveal later in this ruling; it will be tantamount to encouraging endless litigation.

Thenceforth, is the applicant disclosing points of law worth the Court of Appeal's time and attention? The answer is, with respect, a blatant no. As introduced above, the purported grounds are all based on facts and/or evidence which were competently delt with the subordinate tribunal (Ward Tribunal and District Land and Housing Tribunal) prior to this Court's concurrence with the findings of both tribunals.

Going through all nine (9) proposed grounds, the court is certain that the applicant wishes to engage the apex judicial body to yet consider

facts and evidence contrary to the law. In summary form, grounds (i) through (ix) relate to: state of marriage; construction of two houses on one piece of land; division of the matrimonial land among parties herein; ailment of the respondent; sale of respondent's portion of the land; knowledge of the buyer; locus of the seller; confirmation of sale by this court; and dismissal of appeal without proper analysis of evidence, respectively. To say the least, none of these constitutes, even by far, a point of law.

In **Yakobo Magoiga Gichere v Penina Yusuph** CAT-Mwanza, Civ. Appeal No.55 of 2017 the importance of the Certificate sought herein in entire administration of justice was reiterated, thus:

> '*Certificate from the High Court is mandatory for appeals originating from Ward Tribunals and should not be taken perfunctorily or lightly by the certifying High Court and the parties to the impending appeal. The certificate of the High Court predicates the jurisdiction of the court in land matters ... To underscore the significance of the certificate, we may add that where the High Court has certified points of law in appeals originating from Ward Tribunals, the grounds of appeal filed in the court must conform to the points of law which the High Court has certified.*'

From the excerpt above, this court is reminded to pay keen interest before issuing the subject certificate. About four (4) reasons for the

keenness are apparent. First, the certificate on point of law is issued as a matter of compulsory requirement. An appeal without it being attached becomes incompetent. [**Idi Tanu v Abilo Nyamsangya**, CAT- Mwanza, Civ. Appeal No. 461 of 2020 (unreported)]. Second, it is a jurisdictional issue. The Court of Appeal's powers to adjudicate on matters origination from Ward Tribunal cannot be invoked unless the certificate is attached.

Third, the certificate operates as a benchmark for the ground(s) of appeal. Every third appeal in land disputes, such as the envisaged stage herein must rhyme the grounds thereof with the certificate [**Rashid Rashidi Mniposa v Lyeha Jamali Msoi**, CAT-Mtwara, Civ. Appeal No. 15 of 2022 (unreported)]. Four, it must only contain points of law because matters of facts are taken to have been ably dealt with by the three different courts [**Hezron M. Nyachiya v. Tanzania of Industrial and Commercial Workers and Another**, Civil Appeal No, 79 of 2001 (unreported)].

In view of the above discussion the second issue is determined against the applicant. Consequently, the application is found to lack merit and should be, as I hereby do, dismissed. Each party to bear own costs.

It is accordingly ordered.

C.K.K. Morris
Judge
October, 5th 2022

Ruling delivered in the presence of Tabu Kulwa, the applicant and Veronica Lugola, the respondent.

C.K.K. Morris
Judge
October, 5th 2022