

IN THE HIGH COURT OF THE UNITED OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA

MISC. CIVIL APPLICATION NO. 84 OF 2021

*(Arising from the Land Appeal No. 62 of 2020 of the High Court of Tanzania Mwanza
District Registry at Mwanza)*

CLEMENT MARUSHWA-----1st APPLICANT
VENERANDA HERMAN COSMAS-----2nd APPLICANT
VERSUS
ROBERT MAZIBA-----RESPONDENT

RULING

Date of Last order 11/10/2022
Date of Ruling 13/10/2022

M. MNYUKWA, J.

The present application before this Court emanates from the Judgment of the High Court of Tanzania at Mwanza, Hon. Robert, J. dated 18.07.2022 whereas, the learned judge upheld the decision of the District Land and Housing Tribunal. The application is brought under section 5(2)(c) of the Appellate Jurisdiction Act, Cap.141 [R.E 2002]. The applicant seeks for this court to certify that, there are points of law in the decision of this Court in Land Appeal No. 62 of 2020, for the applicant to appeal to the Court of Appeal.



When the matter was scheduled for hearing, the respondent raised two grounds of preliminary objection that: -

- 1. Since the matter arose from District Land and Housing Tribunal exercising its original jurisdiction this court has not been properly moved hence this application is frivolous.*
- 2. The affidavit supporting this application is defective for lack of the 1st applicant's signature.*

At the hearing of the preliminary objections, the 1st applicant appeared in person unrepresented while the respondent had the legal service of Mr. Mushongi advocate holding brief for Mwanaupanga advocate and the 2nd applicant was absent whereas to her, the matter proceeded exparte.

When the matter was called for hearing on the points of preliminary objection, Mr. Mshongi dropped the second point of preliminary objection. Submitting on the first point of preliminary objection he stated that, this court has not been properly moved for the reason that, the matter arose from District Land and Housing Tribunal when exercising its original jurisdiction and therefore the applicant is required to make an application for leave before this court and not application for certification on point of law.



He avers that, the present application is governed by section 47 of the Land Dispute Courts Act Cap 216 RE: 2019 whereas, the law directs under section 47(2) of the above-cited law that, the person so wishes to appeal from the decision of the High Court exercising its appellate or revisional powers need to seek for leave to appeal to the Court of Appeal.

Reverting to this application, he avers that, the applicant prayed for certification on the point of law which is the requirement of section 47(3) of the Land Dispute Courts Act, Cap 216 RE: 2019. He insisted that, since the matter was not originated from the ward tribunal, the application is not proper before this court and prays the same to be struck out.

In reply, the 1st applicant conceded to the preliminary objection raised and prayed the matter to be struck out with no order as to costs.

To mantle with Mr. Mushongi submissions, I perused the court records to find out that the Application No. 555 of 2018 before the District Land and Housing Tribunal was the subject of appeal in Land Appeal No. 62 of 2020 which is subject to this application arising from the District Land and Housing Tribunal. As hinted by the respondent learned counsel and conceded for by the 1st applicant, the application ought to be



preferred under section 47(2) of the Land Disputes Courts Act Cap 216 which provides that: -


(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.

To that end, the application at hand was preferred under the wrong section which in fact served another purpose. The applicant was required to apply for leave and not for certification of point of law as it appears.

In fine, I sustain the preliminary Objection raised and consequently, I struck out the application with no order to costs.

It is so ordered.




M. MNYUKWA
JUDGE
13/10/2022

Court: Ruling delivered in presence of the 1st applicant and the respondent's counsel and in absence of the 2nd applicant.


M. MNYUKWA
JUDGE
13/10/2022