

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF DODOMA  
AT DODOMA**

**MISC.LAND APPLICATION NO. 19 OF 2022**

**MIHINZO SEJE.....APPLICANT**

**VERSUS**

**SAIMONI MANYIKA.....RESPONDENT**

**(Application from the Judgment of the High Court of Tanzania at Dodoma)**

**Dated 31<sup>st</sup> of August, 2015**

**In**

**Land Appeal No. 94 of 2014**

**RULING**

**26<sup>th</sup> September & 4<sup>th</sup> November, 2022**

**MDEMU, J.:**

This application for leave to appeal and certificate on points of law has been filed by the Applicant by way of chamber summons in terms of the provisions of Section 47(2) and (3) of the Land Disputes Courts Act, Cap. 216. In the chamber summons, the Applicant prays for this Court to grant leave to appeal to the Court of Appeal against the judgment of this Court in Land Appeal No. 94 of 2014.

The application is supported by an affidavit sworn by one Mihinzo Seje on 1<sup>st</sup> of March, 2022 on the following prayers:

- 1. That, this honourable court be pleased to grant leave to appeal to the Court of Appeal against the Judgement of the High Court (Land division) in Land case Appeal No. 94 of 2014.*
- 2. That, this Court be pleased to grant certificate certifying that there is a point of Law to be determined in the intended Appeal.*
- 3. That, any other relief (s) this Honourable Tribunal deems just and equitable to grant.*

In a nutshell, the Applicant unsuccessful sued the Respondent before Msamalo Ward Tribunal. Aggrieved by the decision of the trial Tribunal, he appealed to the District Land and Housing Tribunal of Dodoma where the decision of the trial Tribunal was upheld. Aggrieved again, he appealed to this Court. This Court again upheld the decision of the District Land and Housing Tribunal. He therefore, sought leave that he be allowed to appeal to the Court of Appeal.

This application was heard ex-parte on 26<sup>th</sup> of September, 2022 following non-appearance of the Respondent even after being served. The Applicant appeared in person, adopted his affidavit to form party of his submissions. He thereafter added that, the judgment of the two tribunals didn't take into account his evidence. There were no other witnesses other

than his neighbours who were supposed to give evidence. He also said that, the Respondent is not known in the area, and given the opportunity at the Court of Appeal, he will be able to clarify the matter.

I have considered the Applicant's submissions and the records available as well. The issue before me is whether leave to appeal to the Court of Appeal and certificate on points of law may be applied and granted in one and the same application. The enabling provisions as clearly set in the chamber summons is section 47(2) and (3) of Cap. 216. For clarity, the whole of section 47 of Cap. 216 is reproduced as hereunder:

*47-(1) 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 a point of law involved in the appeal.*

My understanding to the foregoing provisions is that there are three conditions depending on the nature of the appeal and where it originates for the Appellant to appeal to the Court of Appeal. **One** is in respect of appeals to the Court of Appeal arising from the High Court in exercise of its original jurisdiction. In terms of the provisions of Section 47(1) of Cap.216, a person aggrieved by the decision of the High Court when exercising original jurisdiction, may appeal to the Court of Appeal without seeking leave of the High Court or the Court of Appeal.

**Two**, for decisions of the High Court in exercise of appellate or original jurisdiction, section 47(2) of Cap.216 require whoever aggrieved by that decision to seek leave of the High Court or Court of Appeal for appealing to the Court of Appeal. Condition number **three** is in respect of appeals to the Court of Appeal originating from Ward Tribunals. Section 47(3) of Cap.216 require the Appellant to apply for certificate of points of law to the High Court for appealing to the Court of Appeal.

In the instant application, the Applicant is aggrieved by the decision of the High Court in exercise of its appellate jurisdiction for matters originating at Msamalo Ward Tribunal. That is to say, the Applicant was supposed to apply to this Court for a certificate on points of law. As said,

he applied for both for a certificate and leave to appeal. This is odd. Much as it was odd to mix certificate and leave to appeal in one application (omnibus application), yet the affidavit is devoid of any point of law to certify. Paragraph 4 of the affidavit which seem to have points of law, in my opinion there is nothing to certify. The paragraph is reproduced as hereunder:

*4. That, going through the Proceeding and Judgment of Msamalo's Ward Tribunal as well as the Dodoma District Land and Housing Tribunal's Proceeding and Judgement, there are serious points of laws needed to be determined by the Court of Appeal of Tanzania on the composition of the Msamalo Ward Tribunal on each date of the hearing and other point of law to be discussed during the hearing.*

That said and done, the application has no merits and is accordingly dismissed. It is so ordered.



**Gerson J. Mdemu**

**JUDGE**

**04/11/2022**

**DATED at DODOMA** this 04<sup>th</sup> day of November, 2022



**Gerson J. Mdemu**

**JUDGE**

**04/11/2022**