

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO. 75 OF 2020

(C/F Misc. Land Appeal No. 29/2019 at the District Land and Housing Tribunal for Arusha, Land Appeal No. 56/2018 originating from Esilalei Ward Tribunal, Application No. 2 of 2018)

ROKOINE NAANGARI APPLICANT

VERSUS

MSEE LEMOMO RESPONDENT

RULING

15/11/2021 & 22/3/2022

ROBERT, J:-

The applicant, Rokoine Naangari, seek to be granted leave to appeal to the Court of Appeal of Tanzania and certification on the point of law involved in the intended appeal worth of consideration by the Court of Appeal of Tanzania against the judgment and decree of this Court in Miscellaneous Land Appeal No. 29/2019. The application is brought under section 47(2) and (3) of the Land Disputes Courts Act, Cap. 216 (R.E.2019) and supported by an affidavit sworn by the applicant.

The applicant and respondent herein appeared as respondent and appellant respectively in Misc. Land Appeal No. 29/2019 before this Court (Masara, J). The Court delivered its Judgment on 28th August, 2020 by allowing the appeal. Aggrieved, the applicant herein filed his Notice of Appeal with intent to appeal to the Court of Appeal against the decision of this Court and requested to be supplied with copies of proceedings, Judgment and decree for that purpose.

Since this matter originated from the Ward Tribunal, the applicant is now moving this Court to grant its prayers for leave to appeal to the Court of Appeal of Tanzania and to certify that there is a point of law worth of determination by the Court of Appeal as a condition precedent to the intended appeal. The application is resisted by the respondent herein who filed his Counter-affidavit contending that there is no point of law worth of consideration by the Court of Appeal of Tanzania.

At the request of parties, this application was disposed of by way of written submissions whereby the applicant's submissions were drawn and filed by Ephraim A. Koisenge, learned counsel and the respondent's submissions were drawn and filed by Ngeeyan Oloibormunyei, learned counsel.

Highlighting on this application, Counsel for the applicant submitted that grounds for this Court to grant leave and for certification on the point of law are stated out at paragraph 5 of the supporting affidavit and they read as follows:-

- (a) Whether, the first High Court Judge was legally justified to rule the two different contracts complement one another and can be read together notwithstanding the (sic) do not refer to one another or one and the same thing.*
- (b) Whether, the appellate High Court Judge was legally justified to rule the respondent validly purchased the suit land yet declined to comment and rule on the Certificate of Title Deed (customary certificate of occupancy) which was validly issued to the appellant.*
- (c) Whether the appellate High Court Judge legally justified to solely relying on testimonies of SM2 and SM3 in the absence of sufficient evidence on records to justify and corroborate their testimonies on the allocation of the suit land in 2004.*

Expounding on the first ground in support of this application, the learned counsel simply argued that, the first ground raises a question on how the High Court complemented two contracts which do not refer to one another as one contract and refers to one and the same thing while each carry different contents.

Submitting on the second ground, he argued that, the High Court erred to rule that the respondent purchased the suit land notwithstanding the customary right of occupancy issued by the relevant authorities and decline to make and comment on the title therefore leave unresolved issue on this segment.

On the last ground, he argued that, the first appellate court was unreliable and unjustified to rely on the evidence which lacks corroboration from the evidence on record.

He maintained that, the essence of the grounds raised is that the decision of the High Court has failed to resolve some issues therefore the determination by the Court of Appeal is important. He made reference to the case of **Nurbhai N. Rattansi v. Ministry of Water Cooperation Energy Land and Another (2005) TLR 220** where the Court observed that, a fact raising contentious issue of law or fact is a fit case for further consideration by the Court of Appeal.

Opposing this application, counsel for the respondent maintained that, the purported points of law raised by the applicant were rightly determined

by the second appellate court and they are purely matters of evidence and not points of law.

Responding to the first ground on two different contracts, the learned counsel argued that, this issue was well determined by the High Court. He clarified that, at page 6 of the impugned judgment, the High Court stated that the two contracts are complementary of each other to the extent that the first contract formalized and officiated the original agreement in the village authority. He maintained that, the issues of contract are purely matters of evidence as the said contract was given as evidence and not raised as a matter of law.

Replying to the second ground, again, he maintained that the question on whether the High Court was justified to rule that the respondent validly purchased the suit land was well decided because there is evidence that proved the said purchase that the respondent bought the suit land from one Lendese Sangeti who testified as SM3 before the Ward Tribunal and his evidence was supported by the Hamlet Chairman (SM2) who witnessed the sale. He insisted that, there is no point of law on this ground either.

Responding to the third ground which faulted the High Court for relying on the evidence of SM2 and SM3 without corroboration. The learned counsel submitted that, the point raised in this ground is purely on matters of evidence and not matters of law. He proceeded to submit that, the Court was justified to rely on testimonies given by SM2 because according to evidence in record SM2 was a chairperson of the hamlet where the suit land is situated, he was a trusted person with sober mind and his testimony did not need any corroboration. Similarly, according to the evidence on record, SM3 was the owner and the seller of the suit land who sold the said land to the respondent and therefore his evidence was credible and could be relied on by the High Court.

In a brief rejoinder, counsel for the applicant faulted the respondent for arguing the grounds raised by the applicant in this application as if he addresses the intended appeal prematurely. He maintained that the position of the law according to section 47(2) and 47(3) of the Land Disputes Courts Act, Cap. 216 (R.E.2019) is to grant leave and certify grounds worth for determination by the Court of appeal only. Thus, he argued that, any attempt to address merits and demerits of the intended

appeal is premature and inconsistent with the cited position of the law. In the end, he prayed for this application to be allowed.

The Court has been moved to grant the prayers sought under section 47 (2) and (3) of the Land Disputes Courts Act, Cap. 216 (R.E. 2019). The cited section reads as follows:-

"47.-(1) ...

(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 point of law involved in the appeal."

In the present application, the decision subject of the intended appeal originated from a land dispute lodged at the Ward Tribunal of Esilalei. Thus, to appeal to the Court of Appeal against the decision of this Court, the appellant needs, as a condition precedent, leave to appeal to the Court of Appeal as well as a certificate from this Court certifying that there is a point of law involved in the intended appeal.

On the question of leave to appeal to the Court of Appeal, this Court is aware that to grant leave to appeal, the grounds of the intended appeal must raise issues of general importance or novel points of law or the grounds of the intended appeal must show an arguable appeal (See **Swissport Tanzania Limited v. Michael Lugaiya, Civil Appeal No. 119/2010, HCT, DSM** (unreported)).

However, since the law requires certification on the point of law, for appeals originating from the Ward Tribunal, this Court cannot grant leave to appeal to the Court of Appeal unless it is satisfied that there is point of law involved in the intended appeal.

I have examined the three grounds for grant of leave and certification on the point of law as stated by the applicant at paragraph 5 of the affidavit and argued by the parties. That is, whether the two contracts referred in this matter complement each other, whether the High Court was justified to rule that the respondent validly purchased the suit land, and whether the High Court was justified to rely on testimonies of SM2 and SM3 without corroboration. It appears to this Court that, the grounds alluded to by the applicant raises factual issues which call for re-evaluation of evidence on

record and not contentious points of law which requires determination by the Court of Appeal.

Consequently, this Court finds no merit in this application and proceeds to dismiss it accordingly.

It is so ordered,



K.N.ROBERT
JUDGE
22/3/2022