

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(BUKOBA DISTRICT REGISTRY)

AT BUKOBA

MISC. LAND APPLICATION NO. 149 OF 2021

(Arising from Misc. Land Appeal No. 25 of 2020 in the High Court at Bukoba, and Appeal No. 14 of 2018 in the Bukoba District Land and Housing Tribunal, Originating from Civil Case No. 13 of 2017 in the Kyaitoke Ward Tribunal)

ALOYS JOHN.....APPLICANT

VERSUS

MAMELTA JEMSI.....RESPONDENT

RULING

Date of Last Order: 23/03/2022

Date of Ruling: 01/04/2022

A.E. Mwipopo, J.

The applicant namely Aloys John filed the present application for leave to appeal and certificate of point of law on the following order:-

- 1. That, the Honourable Court be pleased to grant an application for leave to appeal to the Court of Appeal as required by law to impugn the whole decision and decree made by this Court on 6th August, 2021.*
- 2. That, the Honourable Court be pleased to certify 2 points of law to be canvassed in the Court of Appeal to effect that:*
 - a. Whether it was proper in law to restore the decision of the trial Tribunal of Kyaitoke Ward when the proceedings and decision of the District Land and Housing Tribunal has been nullified.*

- b. Whether it was proper in law by the High Court not to order the appeal be heard afresh in the District Land and Housing Tribunal after nullifying the proceedings and setting aside the decision on the ground that the parties were denied the right to a fair hearing in the appellate Tribunal.*
- 3. Cost of the application be provided for.*

The respondent namely Mamelta Jemsi opposed the application through counter affidavit sworn by her Advocate namely Josephat Bitakwate.

The background of the application is that; the appellant was sued by the respondent in the Kyaitoke Ward Tribunal for the dispute over the ownership of the suit land situated at Bilongo "A" Hamlet. The trial Ward Tribunal decided in favour of the respondent and declared her as the rightful owner of the suit land. The appellant was not satisfied and he appealed successfully to the Bukoba District Land and Housing Tribunal which revised the trial Ward Tribunal decision and declared him the rightful owner of the suit. The respondent was aggrieved by that decision and appealed to this Court in Misc. Land Appeal No. 25 of 2020. This Court allowed the appeal after it found there is illegality in the District Land and Housing Tribunal's proceedings as the Chairman failed to record assessors' opinion. The Court quashed the proceedings and set aside the decision of District Land and Housing Tribunal, it also restored the decision of the Ward Tribunal which declared the respondent to be the owner of the disputed land. The appellant was aggrieved by the said decision and filed Notice of Appeal on 03rd September, 2021;

applied to this Court to be supplied copy of judgment, decree and proceedings on 02nd September, 2021; and he filed the present application for leave to appeal and certificate on point of law.

When the matter came for hearing, the appellant was represented by Advocate Frank John, whereas, the respondent was represented by Advocate Josephat Bitakwate.

The counsel for the applicant submitted that the applicant has two points to be certified by this court for the purpose of being determined by the Court of Appeal. It was his submission that the judgment of this court in land Appeal No. 25 of 2020 dated 06/08/2021 in page 6 did find that the District Land and Housing Tribunal violated principle of fair trial for denying parties the right to a fair hearing. The Court quashed proceedings and decision of the District Land and Housing Tribunal. However, instead of ordering the matter to start afresh before the District Land and Housing Tribunal, the court restored the decision of the Ward Tribunal which declared the respondent the rightful owner of the dispute land. This is the reason the appellant wants to appeal against that decision to the Court of Appeal. The said point of law has to be certified by this court and grant leave to appeal to the Court of Appeal.

In his reply, the counsel for the respondent said that this court in Misc. Land Appeal No. 25 of 2020 quashed the proceedings and decision of the District Land

and Housing Tribunal following infringement of the principles of fair hearing. The applicant counsel argument is that this Court was supposed to order for a fresh hearing of the appeal in the District Land and Housing Tribunal and not to uphold the trial Ward Tribunal decision. It was submission of the counsel for the respondent that the issue raised by the respondent does not meet requirements of point of law to be certified for intended appeal to the court of appeal. What constitutes a point of law is the presence of novel point of law on the issue unprecedented and the said point has not been decided by the court before and significantly goes to the root of the court or the issue at stake involve jurisdiction or where the court below misinterpreted the law.

The issue for determination is whether this application for certification of point of law and leave to appeal to the Court of Appeal has merits.

It is a general law that the party who appeal to the Court of Appeal in the land matters which originates from Ward Tribunal must obtain the certificate on point of law and leave to appeal. This is provided under section 47 (1) and (2) of the Land Disputes Courts Act [CAP. 216 R.E.2019]. The said section provides as follows, I quote:

"47 (1) Any person, who is aggrieved by the decision of the High Court (Land Division) in the exercise of its original, revisional or appellate jurisdiction, may with the leave from the High Court (Land Division)

appeal to the Court of Appeal in accordance with the Appellate Jurisdiction Act.

(2) 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 (Land Division) certifying that there is a point of law involved in the appeal."

The above provision provides for mandatory procedure of obtaining certificate from the High Court that a point or points of law are involved in the matter for the determination of the Court of Appeal and leave to appeal to a party who wishes to have access to the Court of Appeal for a third appeal for a land dispute which originated from the Ward Tribunal. The same position was stated by the Court of Appeal in the case of **Jerome Michael v. Joshua Okanda**, Civil Appeal No. 19 of 2014, Court of Appeal of Tanzania at Mwanza, (unreported).

The purpose of certificate on a point of law is to ensure that deserving cases only reaches the Court of Appeal as it was held in the case of **Ali Vuai Ali v. Suwedi Mzee Suwedi [2004] TLR 110** at page 120. The Court of Appeal in the said case held that, I quote;

"The exercise is therefore a screening process which would leave for the attention of the Court only those matters of legal significance and public importance."

In another case of **Mohamed Mohamed and Another v. Omar Khatibu**, Civil Appeal No. 68 of 2011, Court of Appeal of Tanzania at Zanzibar, (Unreported), the Court of Appeal held that:-

"..... A point of law worthy being certified for our decision would be, for instance, where there is novel point, where the point sought to be certified has not been pronounced by this Court before and is significant or goes to the root of the decision, where the Court below misinterpreted the law, etc. In this sense a mere error of law will not be a good point worthy the certificate."

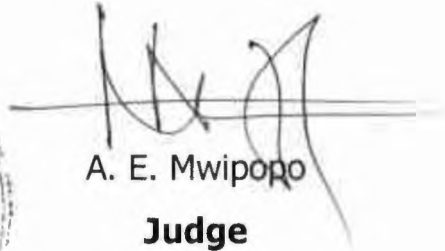
From above cited cases, among the point of law to be certified for the purpose of the intended appeal to the Court of Appeal includes matters of legal significance and public importance; where there is novel point; where the point sought to be certified has not been pronounced by this Court before and is significant or goes to the root of the decision; or where the Court below misinterpreted the law.

In the present case, the applicant have two points of law as they are envisaged in his Chamber Summons. The said points of law are that Whether it was proper in law to restore the decision of the trial Tribunal of Kyaitoke Ward when the proceedings and decision of the District Land and Housing Tribunal has been nullified; and Whether it was proper in law by the High Court not to order the appeal be heard a fresh in the District Land and Housing Tribunal after

nullifying the proceedings and setting aside the decision on the ground that the parties were denied the right to a fair hearing in the appellate Tribunal. Looking at the said points of law, the applicant is saying that this Court misinterpreted the law. The said points of the law goes to the gist of the case which is the ownership of the disputed land and the right of the parties to appeal to the District Land and Housing Tribunal against the decision of the trial Ward Tribunal. This Court after it has restored the trial Ward Tribunal decision did not give the aggrieved party right to appeal against the said decision to the District Land and Housing Tribunal or to give the reason for restoring the said decision without giving the parties right to appeal. For that reason, I find that the said points of law meet the test provided in the case of **Ali Vuai Ali v. Suwedi Mzee Suwedi**, (supra), and **Mohamed Mohamed and Another v. Omar Khatibu**, (supra).

Therefore, the application has merits and is granted. The applicant's points of law are certified to be points of law worthy to be determined by the Court of Appeal in the intended appeal. As the said points of law are certified by this Court to be determined by the Court of Appeal in the intended appeal and the applicant already have filed Notice of Appeal and applied to be supplied with copy of judgment, decree and proceedings, I proceed to grant leave for the applicant to appeal to the Court of Appeal. Since this is application for certificate on point of

law and leave to appeal to the court of Appeal, each party has to take care of its own cost. It is ordered accordingly.

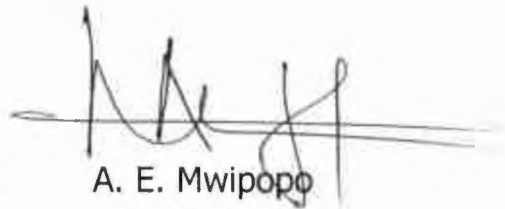
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A. E. Mwipopo

Judge

01/04/2022

The ruling was delivered today, this 01.04.02022 in chamber under the seal of this court in the presence of the applicant, respondent and counsel for the applicant and the respondent.

A handwritten signature in black ink, appearing to be "A. E. Mwipopo", written over a horizontal line.

A. E. Mwipopo

Judge

01/04/2022