

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

Misc. LAND APPLICATION No. 16 OF 2022

(Arising from the High Court (Musoma District Registry) in Misc. Land Appeal No. 44 of 2020; District Land and Housing Tribunal for Mara at Musoma in Land Appeal No. 110 of 2019; and Originated from Sirorisimba Ward Tribunal in Land Dispute No. 3 of 2017)

NDEGE CHACHA APPLICANT

Versus

MAGORI KIHENGU RESPONDENT

RULING

12.05.2022 & 12.05.2022

Mtulya, J.:

This court on 19th August 2020, delivered a decision in **Misc. Land Appeal No. 44 of 2020** (the appeal) originated from Sirorisimba Ward Tribunal (the ward tribunal) in **Land Dispute No. 3 of 2017**, (the dispute) which was also tested at the **District Land and Housing Tribunal of Mara at Musoma** (the district tribunal) in **Land Appeal No. 110 of 2019** (the land appeal). The record of the appeal shows that this court in its judgment, at page two (2) and three (3) stated that:

The law is settled that the Village Council is the trustee of the village land and the villagers are beneficiaries. Section 8 (5) of the Act [Village Land Act [Cap. 114 R. E. 2019]

empowers Village Council to allocate the village land and grant customary right of occupancy with approval of the Village Assembly... there is no evidence on the record that the Village Assembly approved the allocation of the suit land to the appellant as required by section 8(5) of the Act.

Finally, this court delivered the judgment in favour of the respondent and at page six (6) of the judgment held that: *I confirm the disputed land to be Magori Kihengu's properly.* The applicant was not satisfied with the judgment hence preferred the present application seeking for certification on point of law to access the Court of Appeal, under the provisions of section 5(1) (c) of the **Appellate Jurisdiction Act** [Cap 141 R. E 2019]; section 47 (3) of the **Land Disputes Courts Act** [Cap. 216 R. E 2019]; and Rule 45 (a) of the **Court of Appeal Rules**, 2009 (as amended in 2019).

Today morning the application was scheduled for hearing. Mr. Ndege Chacha (the applicant) on his part decided to hire legal services of Mr. Noah Mwakisisile, learned counsel, to raise and argue two (2) points of law involved in the appeal, in order to persuade this court to grant the application in favour of the applicant, whereas the respondent appeared in person without any legal representation to protest the application.

In his brief submission, Mr. Mwakisisile argued that the learned Judge of this court in the appeal had erred in law when he dismissed the appeal for the reason that the allocation of the disputed land to the applicant was not approved by the Village Assembly as required by section 8 (5) of the **Village Land Act** [Cap. 114 R.E. 2019] (the Village Land Act) because the Act was not applicable during the allocation of the land on 15th August 2009.

On the second point of law, Mr. Mwakisisile submitted that the evidence produced by the applicant in the dispute at the ward tribunal shows that he had better evidence and proved his case on balance of probabilities, as a standard of proof required in civil cases. The submission of Mr. Mwakisisile was protested by the respondent who contended that the decision of the ward tribunal in the dispute was determined in 2017 and no any issue of Village Land Act was invited and considered. In his opinion, he won the dispute in the same balance of probability claimed by Mr, Mwakisisile, and in any case, three (3) courts, including this court, decided in his favour.

To his opinion, the facts and evidences produced in the tribunal displayed everything and showed that that the applicant invaded and occupied the disputed land which was fenced by use of trees and in any case, the ward tribunal visited the *locus in quo* and saw every

detail at the scene of the dispute and finally decided in favour of the respondent.

I have gone through the record and reasons registered by Mr. Mwakisile and replies from the respondent, and I think there is legal dispute which need to be interpreted by our superior court. The question whether it was proper to invite and use section 8 (5) of the Village Land Act in resolving the appeal or not, is not a matter that need to be resolved in this court. The issue, from the practice of this court and Court of Appeal, cannot be determined by this court as it is not its role at the moment. It's mandate is just to check if there is any points of law, and allow the application if it sees right to do so (see: **Chacha Mago v. Dr. James Kilaza**, Misc. Land Application No. 57 of 2021 and **Garende Nyabange v. Nyanzara Nyabange**, Misc. Civil Application No. 34 of 2021). In the present application, I see there is a point of law which may invite interpretation of the Court of Appeal.

However, the second alleged point of law registered by Mr. Mwakisile in this application displays a complaint on facts registered at the ward tribunal. I think, the allegation was wrongly brought in the present application. This application is for the court to see whether there is any point of law involved in the appeal, no more. Having said so, I allow the application without costs. Each party shall bear its own

costs. The reason of saying so is vivid. The dispute is still on course to identify the rightful owner of the dispute land. The applicant may wish to file an appeal in the Court of Appeal in accordance to the laws regulating appeals from this court to the Court of Appeal.

Ordered accordingly.

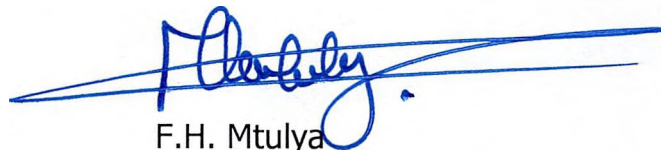
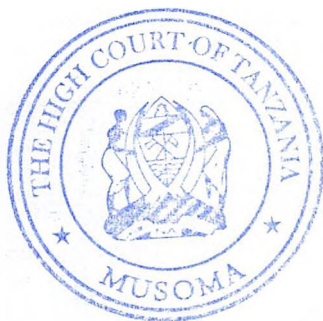


F. H. Mtulya

Judge

12.05.2022

This ruling was delivered in chambers under the seal of this court in the presence of the respondent, Mr. Ndege Chacha and in the presence of learned counsel, Mr. Noah Mwakisisile, learned counsel for the applicant through teleconference.



F.H. Mtulya

Judge

12.05.2022