

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND CASE APPLICATION NO. 552 OF 2021

(Arising from the Decision of the High Court of Tanzania (Hon. V.L. Makani, J.) - Land Division in Misc. Land Appeal No. 149 of 2019 and from the District Land and Housing Tribunal for Ifakara/Ulanga in Land Appeal No. 59 of 2018; Originating from Ching'anda Ward Tribunal in Land Case No.39 of 2016)

NAIMU LIGONEKO & 2 OTHERS APPLICANTS

VERSUS

METHEW MGULUKA RESPONDENT

R U L I N G

Last Order: 30.12.2021

Date of Ruling: 23.03.2022

CHABA, J.

Before Ching'anda Ward Tribunal (the **Ward Tribunal**), the respondent herein successfully sued the applicants and was declared a lawful owner of the piece of land measuring seven (7) acres located at Kilele in Ching'anda Ward. Aggrieved by the decision of the Ward Tribunal, the appellants successfully appealed to the District Land and Housing Tribunal for Kilombero at Ifakara (the **District Tribunal**). However, the respondent was unhappy with the decision of the District Tribunal and preferred an appeal to this court via **Miscellaneous Land Appeal No. 149 of 2019** armed with the following four grounds of appeal: -

Ching

1. *That, the appellate Chairman erred in law and fact in holding that the appellants are rightful owners of the suit premises basing on the weak evidence adduced by the appellants in the trial tribunal.*
2. *That, the appellate Chairman erred in law and fact in deciding in favour of the appellants who hasn't any legal document from the village government council to show how they were given the afore-stated land in dispute.*
3. *That, the appellate Chairman erred in law and fact in deciding in favour of the appellants and ignoring the credibility of the evidence adduced by the respondent in the trial tribunal.*

After hearing of the appeal, this Court (the Court) allowed the appellant's appeal with costs meanwhile quashing and setting aside the decision of the District Tribunal and sustained the findings and the decision of the Ward Tribunal. Discontented with the decision of the Court, the appellants would wish to appeal to the Court of Appeal of Tanzania.

Determined to appeal to the Court of Appeal of Tanzania and access their rights, the applicants by way of Chamber Summons made under section 47 (3) of the Land Disputes Court Act [Cap. 216 R.E. 2019], filed the instant application seeking for the following orders: -

1. *That, this court be pleased to certify the points of law to the applicants to file an appeal to the Court of Appeal of Tanzania against the decision of the High Court, Land Division in Miscellaneous Land Appeal No. 149 of 2019.*

Boaz

The application is supported by the joint Affidavit deposed by the applicants namely; Naimu Ligoneko, Seleman Ligoneko and Amina Ligoneko. The points of law sought by the appellants are five in numbers. I will shortly reproduce and consider them accordingly.

On his part, the respondent challenged the application by filing a counter affidavit and notice of preliminary objection. With the leave of the court the application was heard and argued by way of written submissions. The applicants' submission was drawn and filed by Mr. Barnaba Luguwa, learned advocate whereas the respondent's submission was drawn and filed by the respondent himself.

As regards to the notice of preliminary objections, the respondent raised two points of law against the competence of the instant application on the grounds that: -

- 1. That, this court is improperly moved for wrong citation of the law;*
- 2. That, the application is devoid of merit for being time barred.*

According to the court record, the applicants did not object the above points of law coached as preliminary objections. I say so because in the court record there is no counter affidavit. Having heard and considered the points of preliminary objections, I overruled on the grounds that the same was misconceived and devoid of merits. I Afterward continued with hearing of the main application preferred by the applicant.

During hearing, the learned advocate for the applicants submitted at lengthy. His major complaints centred on the following grounds:



One, that this Court (Makani, J.) (the Court) did not analyse the evidence properly and erroneously upheld the decision of the trial Ward Tribunal. He submitted that the appellants cleared the virgin land (bush land) and farmed the same for more than fifteen years without any person claiming interest in the suit land. He accentuated that the Court ought to consider the fact that the appellants acquired a title to the suit land by adverse possession.

Second, as this is a second appeal, there has been overgeneralizations in the assessment and analysis of the evidence whereby the Court has been moved by the testimony of the witnesses for the respondent that ever since 1982 till 2015 the farmed and seven (7) acres had been in use by the respondent while the evidence of Robert Mauya and Gotady Birika who came in the suit land in dispute in 1998 and 1994 respectively, told the Ward Tribunal that when they entered into the area or suit land, it was a forest jungle and the family of the respondent was not there save for Frank Mguluka who came to occupy the bush between Ligoneko and Robert Mauya. He submitted that in so doing, the Court's analysis went wrong thus awarded the suit land to the respondent on the ground that some family members are still there (in the area) without regard to the fact that the said family members are in the area between Ligoneko and Robert Mauya the land which was claimed by the Mguluka after Ligoneko had established his residence and farm in the year 2000. With this piece of evidence, the learned advocate underlined that this is an error of law which the applicants wish the Court to certify that it is a point of law which can be determined by the Court of Appeal of Tanzania.

Benky

Three; the Court erred in law in stating that the respondent proved that as a family they owned twenty acres and the same was not complete without the land occupied by the applicants whereas there was no plausible evidence adduced regarding the natural boundaries of the land which was owned by the father of the respondent.

Four; the respondent who at first sued those applicants claimed that the land in dispute did not belong to them, but rather it belonged to their father who started farming it in 1982. In that view, the respondent demonstrated that he was the beneficiary of the estate. He underlined that one of the conspicuous facts is that the respondent is not an administrator of the estate of his late father and therefore had no *locus standi* in absence of Letters of Administration.

In response, the respondent adopted his counter affidavit and submitted that the purported points of law raised by the applicants are baseless and at any rate cannot be acceptable on the ground that the land in dispute had been into the ownership of the respondent since 1982 and the same was a family property until 2015 when he discovered the trespass by the appellants. He stressed that the appellants claimed to have owned the land in dispute without having valid documents from the Village Government in line with Village Land Act, 1999.

From the foregoing rival submissions by the parties, it is a trite principle of law that for land matters originating from the Ward Tribunal, the High Court is the final court on issues of facts. Consequently, for a dispute which originates from the Ward Tribunal to reach the Court of Appeal of Tanzania, the applicant(s) is/are duty bound to satisfy the High Court (T) that a point or points of law worth of consideration by the Court

of Appeal (T), exist in the impugned decision. No certificates will be issued where no point or points of law worth for such consideration, has been raised hence marking an end to such matters. This stance of the law was expounded in a number of cases including the case of **Dorina N. Mkumwa vs. Edwin David Hamis**, Civil Appeal No. 53 of 2017; **Agness Severini vs. Mussa Mdoe** [1989] TLS 164; **Eustace Kubalyenda vs. Venancia Daud**, Civil Appeal No. 70 of 2011.

In **Dorina N. Mkumwa vs. Edwin David Hamis**, Civil Appeal No. 53 of 2017; the Court of Appeal held inter-alia that: -

"In land disputes, the High Court is the final court on matters of fact. The Legislature has taken this finality so seriously that it has, under subsections (1) and (2) of section 47 of Cap. 216 [as amended by the Written Laws (Miscellaneous Amendments) (No.3) Act, 2018 Act No. 8 of 2018] imposed on the intending appellant the statutory duty to obtain either leave or certificate on point of law before appealing to this Court. It is therefore self-evident that applications for Certificates of the High Court on points of law are serious applications. Therefore, when High Court receives applications to certify point of law, we expect Rulings showing serious evaluation of the question whether what is proposed as a point of law, is worth to be certified to the Court of Appeal. This Court does not expect the certifying High Court to act as an uncritical conduit to allow whatsoever the intending appellant proposes as point of law to be perfunctorily forwarded to the Court as point of law. We are prepared to reiterate that Certificates on points of law for appeals originating from Ward Tribunals mark a point of finality of land disputes that are predicated on matters of fact.

*Certificates are designed to ensure that land disputes originating from Ward Tribunal come to an expeditious end, preferably in the High Court. On this stance, we abide with our earlier unreported decision in **Timothy Alvin Kahoho vs. Salum M. Adam Mfikirwa**, Civil Application No. 215 of 2013 where we restated that a decision of the High Court refusing to grant a certificate on a point of law under section 47(2) of Land Disputes Courts Act, is final and no appeal against it lies to this Court". (Emphasis supplied).*

Guided by the above position of law, I am now in a position to ponder the grounds proposed by the applicants and determine whether the same are points of law worth of consideration by the Court of Appeal (T). As alluded to above, the points sought to be certified were deposed in the supporting joint affidavit and I reproduce hereunder: -

As regards to the first point of law, Mr. Barnaba Luguwa submitted that the record of the trial Tribunal is incompetent due to the fact that the members who presided on each day of hearing were not recorded and their gender were not recorded. It is my view that, the issue whether the ward tribunal was properly constituted or otherwise is a matter of law as it goes to root of the case on the mandate and jurisdiction of the Ward Tribunal in determining the matter. I see that, this is a pure point of law.

Coming to the second point, it was Mr. Luguwa's contention that the record of the trial Tribunal is incompetent due to the fact that the members who asked questions were not named save for an omnibus record generalized as those questions from members. Upon examining



the proceedings of the trial Ward Tribunal's, it is my view that the argument advanced is not a pure point of law. It is a mixture of facts and law.

In respect of the third point of law, the learned counsel for the applicants accentuated that the High Court Judge erred in law in not finding that the applicants acquired a good title to the land in issue by adverse possession. From the law point of view, it is crystal clear that adverse possession is a legal principle of law under which a person who does not have legal title to a piece of land may acquire legal ownership based on continuous possession or occupation of the land without the permission of its legal owner. On this facet, there is evidence which reveals that the applicants acquired the disputed suit land in the year 2000 and consequently became the owner. However, the applicants had no valid documents to substantiate their argument. In the circumstance, I see nothing to certify as a point of law basing on the principle of adverse possession. I am of the view that, this argument contains both points of law and facts.

As to the fourth point of law, Mr. Luguwa submitted that the High Court Judge misdirected herself on the point of law when she failed to analyse the evidence of Mathew Mguluka, Robert Mauya, Gotady Birika, and Naimu Ligoneko and other witnesses critically and ended with a wrong conclusion that the respondents were in the said 8 acres in issue since 1982 up to 2015 while in fact the applicants have been in the said land since 2000 till 2015 when the respondent invaded the same and tilled it throughout. This hassle was reported at the village government who

Dr. M. J. M. M.

heard them and allowed the applicants to sow the paddy and harvest on the suit land.

I have had ample time to revisit the court records from the Ward Tribunal to this Court. Upon scrutiny of these records in line with the argument advanced by the applicants, I hold that no point of law has been disclosed to the satisfaction of this Court to warrant certification on a point of law.

Concerning the last point of law, Mr. Luguwa contended that the High Court Judge erred in allowing the respondent to sue as the beneficiary of the estate of the late Mguluka without having a valid document from the Village Government or Authority, hence he had no locus standi. On this facet, I see that this is a point of law worth of consideration by the Court of Appeal (T). The question whether or not the respondent had capacity to sue or being sued, in as much as the circumstance of this case is concerned, I think in my view that, this a matter of law and not a factual issue. Intervention of the Apex Court of our Land is vital.

In the result, and to the extent of my findings, I find that this application is meritorious. I allow the application with costs and certify the following points of law as worth for determination by the Court of Appeal of Tanzania;

One; *Whether the Ward Tribunal was properly constituted in determining the land complaint lodged before it, and*



Two; *Whether the respondent had locus standi to sue the applicants as the beneficiary of the estate of the late Mguluka, and/or on behalf of his family members.*

Order accordingly.

DATED at MOROGORO this 23rd day of March, 2022. *DM*


M. J. Chaba

Judge

23/03/2022

