

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY

AT MBEYA

MISCELLANEOUS LAND APPLICATION NO.81 OF 2021

(From Miscellaneous Land Appeal No. 08 of 2021, emanating from the decision of District Land and Housing Tribunal for Mbeya in Land Appeal No. 51 of 2020. Originating from Mapogoro Ward Tribunal in Land Case No. 39 of 2020)

Aidan Japhet Sangula..... APPLICANT

VERSUS

Daudi Funjila RESPONDENT

RULING

Date of last order: 21.04.2022

Date of Ruling: 29.04.2022

Ebrahim, J:

The applicant, Aidan Japhet Sangula having lost at this court, i.e., High Court stage, wishes to appeal to the Court of Appeal. Being a third appeal, it requires a certificate from this court that there a point

of law that needs to be determined by the Court of Appeal. He has thus filed the instant application in terms of **section 47(3) of the Land Disputes Courts Act, Cap 216 RE 2019**. The application is supported by an affidavit sworn by the applicant, Aidan Japhet Sangula.

Going by the averments in para 6 items (i) to (iii) of his affidavit, he listed the points of law that he seeks to be certified for the attention of the Court of Appeal being:

- (i) Whether the 2nd appellate court had jurisdiction to entertain and determine the appeal which was time barred
- (ii) Whether the 2nd appellate court had jurisdiction to entertain and determine the appeal while the same was filed in a wrong forum; and
- (iii) Whether the 2nd appellate court was legally justified to re-evaluate evidence and overturn the concurrent decisions of the two lower Tribunals.

Advocate Kamru Habibu appeared for the respondent. He began submitting on the application where he did not contest

items(i) and (ii) of para 6 of the affidavit of the applicant which touches on the jurisdiction to be certified as points of law. He however, challenged item (iii) of para 6 of the affidavit.

Counsel for the applicant, Mr. Emmanuel Clarence prayed to abandon the third item, rightly so in my considered views and prayed for the court to certify item (i) and (ii) of para 6 of the affidavit.

It is pertinent in law that, the contentious points worth taking to the Court of Appeal on matters originating from the Primary Court or Ward Tribunal for our instant case is where the point of law is involved as provided for under **Section 5 (2) (c) of the Appellate Jurisdiction Act, Cap 141 RE 2019** read together with **section 47(3) of the Land Disputes Courts Act, Cap 216 RE 2019**. This prerequisite was well illustrated by the Court of Appeal in the case of **Ali Vuai Ali v. Suwedi Mzee Suwedi - Civil Appeal No. 38 of 1996 (unreported – CAT ZNZ)**; and the case of **Maulid Makame Ali v.Kesi Khamis Vuai, Civil Appeal No. 100 of 2004 (CAT- ZNZ)**.

The purpose of such a certificate is to ensure that being the 3rd appeal, the Court of Appeal should only concentrate with deserving matters pertaining to the point of law.

Coming to the instant matter, the applicant is seeking to go to the Court of Appeal following a jurisdiction issue questioning the forum that the matter was entertained as well as the issue pertaining to time limitation on adjudicating the appeal.

The particular issue of time limit goes to the jurisdiction of the court in entertaining the matter hence cannot be underscored. Again, as to which forum should the case be filed is statutorily provided, hence a point of law. That being the position therefore, I find that this is among the cases that warrants the certification of this court for the Court of Appeal to determine as to whether the 2nd Appellant Court had jurisdiction to determine the appeal on the aspect of time limitation; and whether it had jurisdiction to entertain an appeal emanating from a Tribunal that had no jurisdiction to adjudicate on the matter at first place.

Accordingly, I allow the application. Costs shall follow the main event.

Accordingly ordered.



Mbeya
29.04.2022

A handwritten signature in blue ink, appearing to read "R.A. Ebrahim".

R.A. Ebrahim
JUDGE.