

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB - REGISTRY OF MWANZA  
AT MWANZA**

**MISC. CIVIL APPLICATION NO.129 OF 2022**

*(Originating from PC Civil Appeal No. 65 of 2021)*

**TCG <sup>c/o</sup> MELKIAD TIBEZUKA.....1<sup>ST</sup> APPLICANT**

**SAMWEL ALFRED.....2<sup>ND</sup> APPLICANT**

Versus

**DENIS MGETA.....1<sup>ST</sup> RESPONDENT**

**WEO NYEHUNGE.....2<sup>ND</sup> RESPONDENT**

**RULING**

*Feb. 15<sup>th</sup> & Feb. 15<sup>th</sup>, 2023*

**Morris, J**

The Applicants lost in PC Civil Appeal No. 65 of 2021 before this Court. The said appeal originated from Civil Appeal No. 20/2020 of the District Court of Sengerema arising from Nyehunge Primary Court's decision. The first appellate court and this Court decided against the appellants. With the recorded dissatisfaction, the Applicants wish to yet knock the doors of justice at the Court of Appeal. They accordingly filed the requisite notice of appeal on 1/11/2022. Consequent to that, the present application has been preferred because the intended proceedings will be a third appeal; which statutorily must be supported by the requisite certification on a point of law.



The application is supported by the affidavit of Akram Adam and contested by the depositions from Stephen M. Kaijage both learned counsel for the parties respectively. Applicants have advanced two grounds under paragraph 4 of the affidavit supporting the application. The gist from these grounds includes, **one**; the legality of this Court to determine the appeal basing on one ground only in total disregard of the second ground. **Two**; whether or not it is legal for a party, who did not take part in the trial, to be made or added as party at the stage of appeal originating therefrom. During hearing, the application was not contested.

The Court is, thus, required to determine whether or not the applicant discloses point(s) of law worth the Court of Appeal's time and attention. Being a third appeal, the prospective proceedings should be based on points of law, in strict sense, as held in ***Mariam Othman Matekele v Nyacheri Joseph Mwangwa***, HC Misc. Civil Application No. 139/2021 (unreported), that:

*"Strictly speaking, a point of law is a matter involving the application or interpretation of legal principles or statutes. It is the determination of what the law is and how it is applied to the facts in the case."*

Principally, a point of law or points of law pertain to matters other than facts or evidence. The justification is not too far to find. In the third appeals, it is a settled position of law that, facts and/or evidence would

have been adequately and competently dealt with by the courts below the Court of Appeal. In ***Yakobo Magoiga Gichere v Penina Yusuph*** CA Civil Appeal No.55 of 2017 (unreported); the importance of the envisaged Certificate herein in entire administration of justice was reiterated.

Having studied the records of this matter, I find that there is one point of Law worth determination by the Court of Appeal. That's;

*"The legality of Appellants (TCG c/o Melkiad Tibeziuka and Samwel Alfred) being made parties in Civil Appeal No. 20/2020 while they did not take part in the Trial of Civil Case No. 38/2020 from which the subject appeal emanated."*

In view of the fact that the Applicants are still interested in pursuing the appeal, I hereby grant them the Certificate on a Point of Law accordingly.



**C.K.K. Morris**  
**Judge**  
**15/02/2023**