IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB REGISTRY OF KIGOMA

AT KIGOMA

MISC. LAND APPLICATION NO.28 OF 2022

(Arising from Misc. Land Appeal No. 03 of 2022, arising from DLHT Land Appeal No.174 of 2020 and originating from Mungonya Ward Tribunal Land Case No.21 of 2014)

SAID ALLY ..... APPLICANT

VERSUS

RASHID ALLY ..... RESPONDENT

Date of Last Order:01.12.2022
Date of Ruling: 06.03.202

RULING

MAGOIGA, J.

The applicant, **SAIDI ALLY** preferred this application under the provisions of section 47(2) of the Land Disputes Courts' Act, No.2 0f 2022 [Cap 216 R.E.2019, section 5(2) (c) of the Appellate Jurisdiction Act, [Cap141 R.E.2019 and any other provision of the law for certification on points of law worth for Court of Appeal of Tanzania consideration, costs of this application and any other relief this court may deem fit to grant. The impugned decision to be challenged was delivered on 29/07/2022 affirming the two concurrent findings of the lower courts.

The applicant under paragraph 6 of the affidavit enumerated 3 grounds for certification in the following language:-

6(i) that in the light of evidence on record, whether in law, the High court on 2nd appeal did not misdirect itself in the re-evaluation of evidence on record on crucial matters of the dispute particularly:-

(a) Whether the suit shamba had not been family land where the late ALLY TALIYE lived and his family before death and so remined under the respondent's care as elder son in the absence of dully appointed administrator to administer it whether locally or legally;

(b) Whether in the absence of evidence of a dully appointed administrator of the estate of the late ALLY TALIYE who despite passing away in 1972 had left behind several properties including the suit land as family residence, whether the respondent had locus standi to claim it as his personal property and in his names something that the High Court accepted;

(c) Whether in the absence of a birth certificate or any other evidence proving the respondent's age, whether the High Court did not misdirect itself in believing mere assertion by the respondent that he completed standard seven in 1975 at

an age of 19 to justify personal allocation of the suit land while a minor having been born in 1962;

(d) Whether even if the High Court had decided to believe the respondent's story that the mahame (original family land) was sold unto the respondent and the proceed divided, whether there was any evidence on record to the effect that the residential place of the late ALLY TALIYE was ever administered or else the same was homeless?;

(e) That on the evidence on record, whether in law the respondent proved on any balance the purported allocation of the suit land to himself in 1974 without support of any allocating authority or personal, documentation or neighbour;

(ii) Whether in law, the High Court could make observations for future guidance particularly relating to matters of limitation and application of section 15 of the Village Land Act without hearing parties and or evidence on record supporting the impugned allocation to the respondent in 1974;

(iii) That whether in law and in fact the two lower Tribunals concurrent findings of facts were on same issues to

warrant the High Court's non-interference in the absence of clear misdirection and or non-direction.

I have carefully considered the three points as enumerated above and have gone through the judgement of this Court and what is complained of as point of law, can be summarized into three grounds that; **One,** whether the High Court did not misdirect itself in the re-valuation of evidence as alleged in the 5 sub paragraphs which were basically on factual issues rather than legal issues; **two,** whether the High Court erred in giving guidance without hearing parties, and last one, whether the High Court was not allowed to intervene in the absence of clear misdirection and or non-direction.

Upon being served, the respondent filed counter affidavit strongly resisting the grant of the application and regarded all grounds raised as misconceived and urged this Court to dismiss this application.

When this application was called on for hearing, the applicant was unrepresented whereas the respondent was respresented by Mr. Slyvester Damas Sogomba, learned advocate. The applicant prayed that they argue the application by way of written submissions. I outrightly granted the prayer for Mr. Sogomba had

no objection. I had an opportunity to read and consider the contents of the written submissions which I will not reproduce here.

Mainly in his submissions, the applicant apart from premising his submissions on the provisions in which it was preferred but the contents of paragraphs 6, in particular, item one raises purely factual issues of evidence and in my respective opinion no point of law was raised worth for consideration by the Court of Appeal of Tanzania.

As to the second point, I find it misconceived because when a judge makes some observations by way of passing or making a point need not call parties and no law was cited to substantiate the said point which was abrogated.

This as well goes to the third point raised that in the absence of non-direction or misdirection by the findings of two lower courts/tribunals, the High Court was enjoyed to affirm the decision. This is what the High Court did and I find no point of law abrogated.

It is on the above reasons, quite as correctly argued by Mr. Sogomba, and rightly so in my own opinion, of all the points raised, none qualified as point of law rather same were based on evidence

which was well evaluated by the lower tribunals and this Court in its second appellate jurisdiction.

On the totality of the above and all considered, I find this application wanting for point of certification for consideration by the Court of Appeal of Tanzania, hence, same must be and is hereby dismissed with costs.

It is so ordered.

Dated at Kigoma, this 06th day of March, 2023.

S. M. MAGOIGA.
JUDGE
06/3/2023